This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

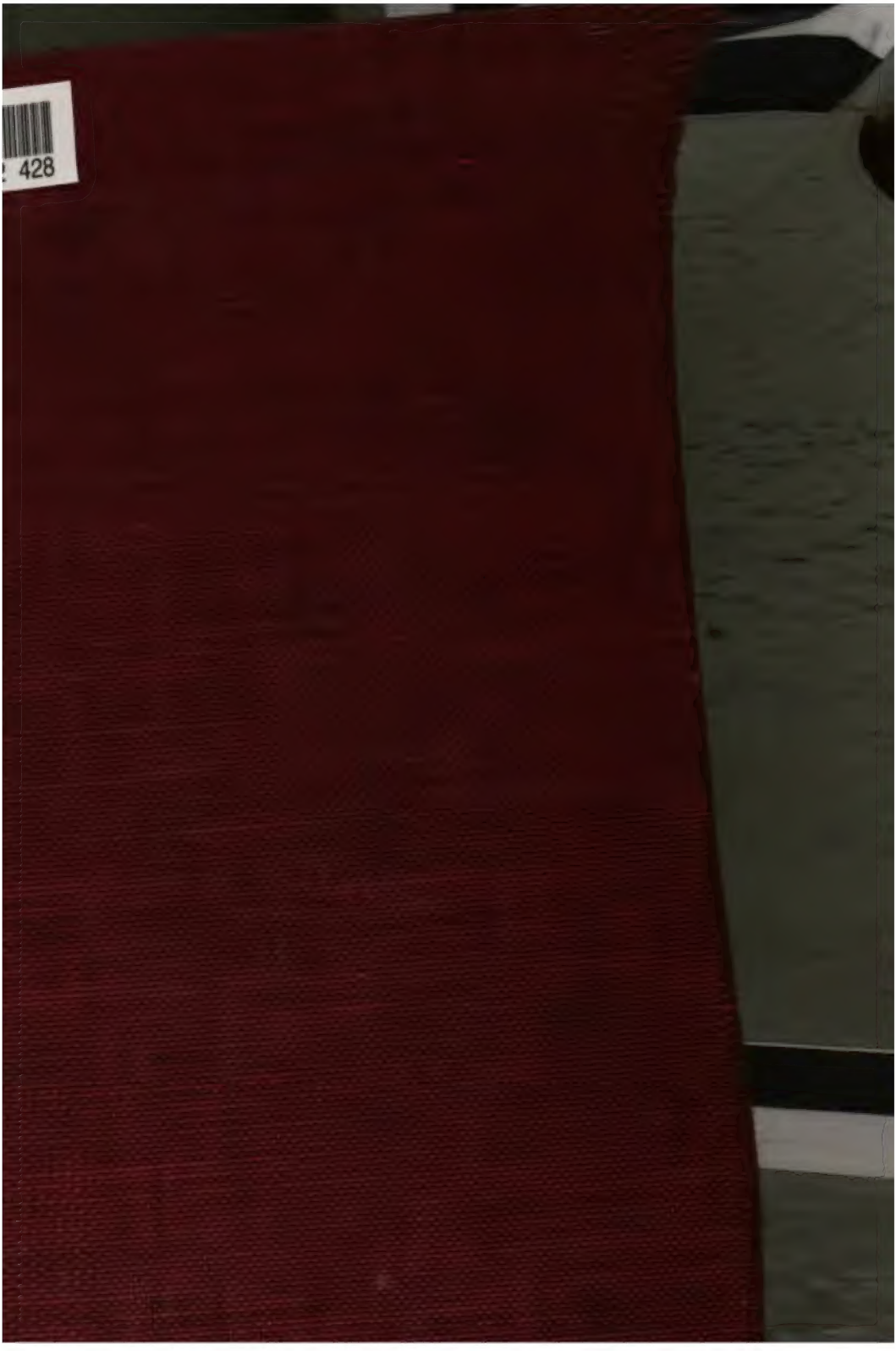
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at http://books.google.com/

3 2044 103


428

L

Bd Feb 1898.

HARVARD LAW LIBRARY.

GIFT OF

Prof J. H. Beale,

Received Dec. 13, 1897.

REPORTS

FROM

THE COURT OF CLAIMS,

SUBMITTED TO THE

HOUSE OF REPRESENTATIVES

DURING THE

SECOND SESSION OF THE THIRTY-SIXTH CONGRESS.

1860-'61.

IN THREE VOLUMES.

KF
125
C5
C5
1860-61
v 2.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1861.

Rec. Dec. 13, 1887.

INDEX

TO THE

REPORTS OF THE COURT OF CLAIMS.

SECOND SESSION OF THE THIRTY-SIXTH CONGRESS.

VOLUME I..No. 256 to No. 258.
VOLUME II..No. 259 to No. 269.
VOLUME III..No. 270 to No. 276.

	Vol.	No.
A.		
Adams, Theodore	1	256
Armstrong, James B., administrators of	2	269
Armstrong, William, and Joseph San Romons, administrators of James B. Armstrong	2	269
B.		
Baldwin, John P.	2	259
Barker, Jacob, assignees of	1	258
Bateman, Constance	3	276
Brevoort, Elias, and Joab Houghton	2	266
C.		
Cameron, Gilbert	3	270
Cousin, Nathaniel P., administrator of John H. Stone	2	268
Charlant, Peter, surviving child of	2	264
Charlant, Jacques, surviving child of Peter Charlant	2	264
Coxe, Richard S., administrator of Anna Gibson	2	261
Cruger, Lydia, executrix of Moses Shepherd	2	260
D.		
De Caindry, Augustin	3	276
G.		
Gibson, Anna, administrator of	2	261
Grannis, Enos, administratrix of	3	272
H.		
Halleck, F. G., and others, assignees of Jacob Barker	1	258
Houghton, Joab, and Elias Brevoort	2	266

	Vol.	No.
I.		
Irvin, Richard, trustee of the Mechanics' Bank, New York	2	262
J.		
Jenkins, C. J., and W. W. Mann, assignees of John McKinnie	2	263
Jordan, John, executor of	3	273
K.		
Knaggs, Whitmore, administrator of	2	267
Knaggs, James W., administrator of Whitmore Knaggs	2	267
L.		
Larkin, Thomas O., assignee of	3	274
Leese, Jacob P., assignee of Thomas O. Larkin	3	274
Little, Jacob, and others, assignees of Jacob Barker	1	258
M.		
Mann, W. W., and C. J. Jenkins, assignees of John McKinnie	2	263
McKinnie, John, assignees of	2	263
Mechanics' Bank, New York, trustee of	2	262
N.		
Naugle, Thankful, administratrix of Enos Grannis	3	272
Norris, Samuel	1	257
P.		
Paxton, James, executor of John Jordan	3	273
S.		
San Romons, Joseph, and William Armstrong, administrators of James B. Armstrong	2	269
Selfridge, Thomas O	3	271
Shepherd, Moses, executrix of	2	260
Siebert, Selmar	2	265
Stone, John H., administrator of	2	268
W.		
Wamaling, Julia	3	276
Ward, R. R., and others, assignees of Jacob Barker	1	258
Y.		
Yale, Moses	3	275

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 259.

JOHN P. BALDWIN.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JOHN P. BALDWIN *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Petition to Congress and accompanying papers, referred by the Senate to the Court of Claims, transmitted to the Senate.
3. Depositions of William Cooley and Charles Horne, filed in the Court of Claims by claimant on the 30th day of October, 1858; also, depositions of William H. Wall, William Rigby, William Cooley, and Alexander Patterson, filed in the Court of Claims by claimant, March 19, 1850, transmitted to the Senate.
4. Claimant's brief.
5. Solicitor's brief.
6. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of December, A. D. 1860.

[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the judges of the Court of Claims:

The petition of John P. Baldwin, a citizen, late of Dade county, now of Monroe, in the State of Florida, respectfully represents: That in the latter part of the year 1835 a Spanish brig, called the Gil Blas, was wrecked on the Florida beach, about 35 miles northward of Cape Florida; that a short time after she was sold at auction at Key West, with her cargo, as she lay on the beach, and was purchased by your petitioner; that early in the year 1836 the said brig and her cargo was set fire to and consumed by the naval officers of the govern-

ment, in order to prevent the possibility of said schooner and cargo falling into the hands of the Indians, with whom the government was then at war; that the said cargo consisted of the following articles:

6 tons of lead, valued at	$480 00
5 tons of kentledge	100 00
30 water casks	75 00
2 chain cables	300 00
3 anchors	75 00
Hull, sails, and rigging	170 00
	1,200 00

Your petitioner further represents that the destruction of the said brig and cargo for the "public good" is fully set forth in the declaration made on the 26th of July, 1836, by Thomas Leib and George Clark, lieutenants in the United States navy, hereto annexed, and the value of the same is shown by the depositions of witnesses, taken under the order of the district judge of the Territory of Florida, to be found in the papers referred by the Senate of the United States to this court.

Your petitioner further represents that if the said property had not thus been destroyed he would have been able to save the same, and to have realized by his purchase more than the amount at which the said articles are valued, and that he was at the time saving said articles, and that by reason of the act aforesaid the said articles have become wholly lost to him.

Your petitioner states that this claim was presented to the Senate the 1st session of the 29th Congress; that an adverse report, No. 58, was made at that Congress, but the same was recommitted, and a favorable report, No. 202, made. That on the 3d of August, 1846, 11th of February, 1848, and 30th of June, 1856, the said claim was also favorably reported on by the Senate committees, and that at the present session the same was referred by resolution of the Senate to this honorable court.

Your petitioner further represents that he is the sole owner of the claim, and he prays that a bill may be reported in his favor for the amount herein stated, together with the interest due thereon.

P. PHILLIPS, *Solicitor for Petitioner.*

Sworn to and subscribed before me this 8th day of February, 1858.

WM. MARIM, *United States Judge.*

JOHN P. BALDWIN.

TERRITORY OF FLORIDA, COUNTY OF DADE,
Indian Key, July 26, 1836.

We, the undersigned, thinking it best for the public good, did set fire to the brig Gil Blas, that she might become covered with sand, and that all traces of her might be destroyed, to prevent the Indians

ever getting from her any lead or other articles which would be of any use to them.

JAMES M. ARMSTRONG,
Master of U. S. schooner Motto.
THOS. J. LEIB,
Lieutenant United States Navy.

I also certify that I was present at the burning of said brig Gil Blas, and that there was on board of said brig her chain cables and two anchors.

GEORGE CLARK, *United States Navy.*

IN THE COURT OF CLAIMS.

JOHN P. BALDWIN *vs.* THE UNITED STATES.

The evidence shows that, in the latter part of 1835, the Spanish brig Gil Blas was wrecked off the coast of Florida; that she was sold at auction at Key West as she lay stranded on the beach, and that the claimant became the purchaser.

That the officers of the United States, "thinking it best for the public good, did set fire to said brig, that she might be covered with sand, and that all traces of her might be destroyed, to prevent the Indians ever getting from her lead or other articles which would be of any use to them. (See certificates, p. 4.)

This certificate was given by Lieut. Lieb—"to be forwarded to John P. Baldwin, the owner"—to Charles Howe, at the time deputy collector of the customs at Key West. (Dep. of Howe, p. 23.)

To ascertain the damage done to him, Baldwin filed his petition in the district court of the United States, praying that, for the ascertainment of what indemnity was justly due from the government, appraisers should be appointed.

This was done, and the return of the appraisers showed the loss to be $1,200. (p. 8.) The depositions of Peter Scott and William Cooley (pp. 6 and 7) accompany this report. Scott is shown to be dead, and Cooley has been examined in this case. (p. 23.)

In this latter examination he refers, for value of the different articles, to his answers to the interrogatories made by him soon after the burning of said brig.

In addition to these, we have also the deposition of Wade. S Rigby, (p. 9,) that the brig and cargo could have been brought to Key West; that the Indian hostilities would not have prevented this; and that the burning of the brig occasioned the loss of the indestructible articles, as they were covered up by the shifting sands, and thus all trace of their locality lost.

This is also confirmed by the depositions of George Aldersdale, (p. 10,) Capt. N. L. Coste, (pp. 10, 11,) and William Rigby, (p. 19.)

The case as made by the evidence shows that the property of the petitioner was destroyed for the public good by the authorized agents

of the government, and the public treasure must make compensation. (See 2 Kent's Com., p. 339, and notes.)

It can make no difference as to the liability that the property was destroyed and not used by the government.

A vessel may be taken from the owner in time of war, when the public interest demands it; or it may be destroyed to prevent its falling into the hands of the enemy. In the one case, as well as in the other, there is an *individual* loss, and a *public use*, in the constitutional sense, which entitle the party to a just compensation.

P. PHILLIPS,
Solicitor for Petitioner.

JUNE 9, 1859.

JOHN P. BALDWIN vs. THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for the loss of property on board of a stranded vessel in Florida, which vessel was burnt, by order of a naval officer, to prevent such property falling into the hands of the Indians during the war with them in 1836.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. The plaintiff claims that he was the owner of the Spanish brig Gil Blas and the property on board of her.

Second. That the brig was stranded on the eastern coast of Florida, near New River, about thirty-five miles northward of Cape Florida, from two to three hundred miles from Key West, in the fall of 1835. (Rigby's ev., Record, p. 19.)

Third. That said brig had on board when she stranded a quantity of lead, supposed to be six tons; also a quantity of kentledge; but her sails and rigging, or most of them, with some lead, were taken to Key West. (Cooley's statement, Record, p. 7.)

Fourth. That said brig was not bilged, and she could have been readily extricated from the beach, and, with her cargo, taken to Key West, and the owner could have employed the Florida wreckers to have helped him. (Rigby's statement, Record, p. 9.)

Coste says: "This one (wreck Gil Blas) could readily have been saved and brought to this port (Key West) had the wreckers have been there at the time." (Record, p. 11.)

Fifth. "That the said brig was sold at Key West, at public outcry, in the month of December, 1835," to plaintiff. (Rigby's statement, Record, p. 9.)

Cooley says: "That during said year she (the brig Gil Blas) was sold at auction at Key West, by order of her captain, as she laid on the beach." (Record, p. 7.)

Sixth. Plaintiff claims to have acquired his title by purchase, at public auction, in December, 1835.

"I became the owner of the brig and a part of her cargo by purchase, at public auction, in December, 1835, and I immediately begun to make preparations to bring them to this port, (Key West.) The major part of the cargo had been saved by wreckers before the sale." (Record, p. 16.)

Seventh. The plaintiff saved a portion of his purchase.

The plaintiff says: "I immediately commenced making preparations to save my property, and secured and brought some of it to this place, (Key West;) but in consequence of cold weather and the prevailing winds, some little delay occurred in obtaining wreckers to go up to her." (Record, p. 17.)

Eighth. That on the 26th of July, 1836, some eight months after said plaintiff claims to have purchased said brig and her cargo, she was burnt, by direction of an officer of the navy, to prevent the lead and other articles on board being taken by the Indians.

Lieb and Armstrong, of the navy, certify to William Cooley, under date of July 26, 1836, as follows:

"SIR: We, the undersigned, thinking it best for the public good, did set fire to the brig Gil Blas, that she might become covered with sand, and that all traces of her might be destroyed, to prevent the Indians ever getting from her any lead or any other articles which would be of any use to them." (Record, p. 7.)

Ninth. What articles were taken from the wreck by the wreckers for the captain and owners is not shown, nor does it appear that they took away and carried to Key West for the plaintiff is not proved.

Tenth. The proof does not show what particular articles or what quantity were on board of the brig when she was burnt, though the officers destroying her understood there was lead and some other articles on board.

Eleventh. There is no evidence that the plaintiff, for months previous to the burning, had been taking any measures to save the vessel or to remove her cargo. Both seem to have been abandoned.

Twelfth. The wreckers employed by plaintiff were, in fact, driven off by the Indians.

From the plaintiff's own statement, (Record, p. 17,) it seems he sent wreckers to the vessel, but they were delayed in starting by the cold weather and winds. It is fair to presume that they went as soon as it became a little warmer. A party did go, and they abandoned the work on account of the presence of Indians.

Cooley testifies: "I was employed by John P. Baldwin to get the vessel off and save the cargo. When in the act, witness's family were all murdered by the Indians while residing about nine miles from the vessel; and in consequence of the hostile Indians being so thick on the coast and in the vicinity of the brig, had to abandon the work and discharge a large number of men that I had employed by order of John P. Baldwin." (Record, p. 23.)

Thirteenth. There is no evidence that the plaintiff made any further effort to save the vessel or cargo.

Fourteenth. There is no evidence of the value of the property on board at the time of the burning, situated as it was in the Indian country, and so distant from Key West.

Fifteenth. There is no evidence what plaintiff paid for the wreck and her cargo, or that he, in fact, paid anything.

Sixteenth. There is no evidence that the wreck and cargo were sold by order of any court having jurisdiction thereof.

Seventeenth. There is no evidence that the captain had any power or authority to make sale of the wreck or cargo; nor is there proof that the person referred to as captain was really such captain.

Eighteenth. The plaintiff produces no bill of sale; nor does he prove any delivery of the property he claims; nor any that he, in fact, paid anything whatever for it.

Nineteenth. There is no evidence that there was a necessity for the captain selling; but, on the contrary, the proof is clear that there was no such necessity at the time of the stranding in 1835.

Rigby says: "Furthermore, this deponent saith that said property could all have been saved had she not have been destroyed." (Record, p. 19.)

Simonton says: "It was not anticipated that the hull could be got afloat, but all the other articles could have been saved without difficulty by the wreckers if she had been let alone by the navy officers." (Record, p. 18.)

The plaintiff said: "That I could and would have saved them, (the vessel and cargo,) that I had the means of so doing, and that they were safe and secure on the beach, and might have remained so for a great length of time had it not been thus destroyed, must be abundantly evident from the depositions annexed, and from the fact that I had, after my purchase, and before she was burnt, saved a portion of the cargo," &c. (Record, p. 17.)

Rigby says: "She (the brig) could have been readily extricated from the beach, and with her cargo brought to this port."

"The *owners* might have saved the brig with ease, and everything in and on her, had she not been thus destroyed." (Record, p. 9.)

Twentieth. That it appears from the evidence that when the vessel was first stranded she and her cargo could have been saved, and the cargo was mostly saved; but that afterwards, when the Indians became numerous and troublesome, they could not be saved, and were not, but were abandoned by the agent of the plaintiff.

LEGAL PROPOSITIONS.

FIRST. *The plaintiff shows no sufficient evidence of title to either the vessel or cargo.*

The plaintiff's claim rests exclusively upon an alleged sale at Key West, by the captain, of the vessel and cargo, which were not present, but were some two or three hundred miles distant, and which was made without delivery or bill of sale, and without proof of consideration, and without proof of any power or authority conferred upon the captain by the owners of either the vessel or cargo. To the validity of such a sale there are several objections:

1. There was no bill of sale.

A bill of sale, by the maritime law, is necessary to transfer a ship or vessel.

In *Weston* vs. *Pinniman*, (1 Mason, 306, p. 316,) Judge Story said: "To be sure a bill of sale is necessary to pass the title of a ship. But this does not depend upon any enactment peculiar to our municipal law, but it grows out of the general maritime law, which requires such a document as a proper muniment of title of the ship."

In the case of the Two Sisters, (5 C. Robinson, 155, p. 159,) Sir William Scott said: "According to the ideas which I have always entertained on this question, a bill of sale is the proper title, to which the maritime courts of all countries would look. It is the universal instrument of transfer of ships in the usage of all maritime countries, and in no degree a peculiar title deed or conveyance known only to the law of England."

2. The property sold was not present, and no delivery is proved to have been made.

The evidence shows that the property was some fifteen miles from New River, and thirty-five north of Cape Florida, which was some two or three hundred miles northeast from Key West, where the sale is claimed to have been made, and no delivery was or could have been made at the latter place.

Delivery, actual or constructive, is clearly necessary to pass title. We are not to consider the effect of a bill of sale, because none is proved. This is a case of a sale of a ship and cargo hundreds of miles away, where no bill of sale was given and no delivery was made, so that there was neither actual nor constructive delivery; and, without the one or the other, no title could pass. No court has held that the title can pass when there was neither bill of sale nor delivery.

3. There is no evidence that the plaintiff paid any consideration for the assumed purchase of said vessel and cargo.

In addition to the defects above suggested, that there was neither bill of sale nor delivery, the plaintiff does not show that he paid any consideration whatever, without which the title would not pass; there is not an allusion in the evidence that anything was paid, much less how much. The plaintiff may have bid for the vessel and cargo, and the same have been struck down to him in the presence of the witnesses, and they may have deemed this a sale. But clearly it would not constitute a sale. The witness swears to a conclusion of law, instead of swearing to the facts, to enable the court to determine whether there was a sale or not. There is an entire omission of all facts from which the court can come to the conclusion that there was a sale. Without a bill of sale or delivery, or consideration proved, the court cannot say that there was a sale.

In the absence of these facts, there is no evidence which would bar a claim by the owners, should they demand compensation for this same vessel and cargo. There is not enough shown to prove a transfer of their rights, even if the master had the undoubted right to sell.

In *Hozey* vs. *Buchanan*, (16 Pet., 215, p. 220,) the Supreme Court held: "But the charge that 'a bill of sale, accompanied by possession,' constituted a good title in law, is liable to objection. That such an instrument connected with the possession is prima facie evidence of right may be admitted; but in the view of the evidence in the case,

there should have been the qualification that the transfer was bona fide, and for a valuable consideration."

In the present case there was no bill of sale, no delivery of possession, nor proof of consideration.

4. It is not shown that the captain had any authority to sell either ship or cargo.

There is no evidence that the master was clothed with any express authority by the owners to sell either. Nor is there any that any court adjudicated the sale. Nor does it appear that a survey was made by the proper persons to consider, advise, or determine as to the propriety of such sale, as is required by the maritime law in all cases where practicable, as it is shown to have been in this case.

There is no proof that there was a necessity for a sale; but, on the contrary, the plaintiff has shown that, at the time of the stranding, and for some time afterwards, the vessel and cargo might both have been saved, although, when Cooley abandoned them, it had become impracticable on account of the Indians.

It is well settled that the master of a vessel has no power to sell a ship or cargo except in cases of absolute and extreme necessity, to be clearly shown.

Abbott, in his treatise, says: "That in extreme cases, and in extreme cases only, he (the master) had the power to sell, as in the instance of a wreck which could not be got off, and ought not to be left to perish absolutely."

In *The American Ins. Co.* vs. *Centre*, (4 Wen., 45, pp. 51, 52,) Walworth, Chancellor, said: "I know of no principle which can authorize the abandonment of a vessel, either in port or elsewhere, merely because materials cannot be had there to make full repairs. If the ship is not injured to a moiety of her value, it is the duty of the master to make her seaworthy, and to proceed on the voyage." "The master is not authorized to sell the ship or cargo except in a case of absolute necessity, when he is not in a situation to consult with his owner, and when the preservation of the property makes it necessary for him to act as the agent of whom it may concern."

In the present case, the plaintiff himself expressly refers to the vessel and cargo after his purchase: "That I could have saved them, that I had the means of so doing, and that they were safe and secure on the beach, and might have remained so for a great length of time had it not been destroyed, must be abundantly evident," &c. (Record, p. 17.)

In *Gordon* vs. *Mass. F. & M. Ins. Co.*, (2 Pick., 249, pp. 262-'3-'4,) Parker, Ch. J., reviews the cases on the subject of the captain's power. He states the case where a survey is necessary, and urges its propriety, and quotes with approbation the opinion of Chief Justice Dallas in Ide *vs.* Exch. Ass. Co., (3 Moore,) which is as follows:

"The right to sell, as between the captain and owners, has been deemed of a very questionable nature; although upon the whole, extracting from the books what seems to be the weight of authority, I conceive that the right to sell must be considered to exist in cases of *extreme necessity*. A right, however, which in all cases must be strictly watched."

In *Hall* vs. *Franklin Ins. Co.*, (9 Pick., 466,) it was held: That "the necessity which will justify the master of a ship in selling her is one in which he has no opportunity to consult the owners or insurers, and which leaves him no alternative."

Kent (3 v., 173,) says: "But if the voyage is broken up in the course of it by ungovernable circumstances, the master, in that case, may even sell the ship or cargo, provided it be done in good faith, for the good of all concerned, and in a case of supreme necessity, which sweeps all ordinary rules before it. The merely acting in good faith and for the interest of all concerned is not sufficient to exempt the sale of goods from the character of a tortuous conversion, for which the ship-owner and the purchaser are responsible, if the absolute necessity of the sale be not clearly made out. Nor will the sanction of the vice-admiralty court aid the sale when the requisite necessity is wanting. All the cases are decided and peremptory, and upon the soundest principles, in the call for that necessity."

The same rules are laid down in Curtis's Rights and Duties of Merchant Seamen, pp. 186 to 189.

In the case of the schooner Tilton (5 Mason, 465,) Judge Story held: "The master of a ship has not, in virtue of his office, any authority to sell a ship, except in cases of extreme necessity, where the vessel is wrecked or ungovernable, &c. If he sells without such necessity, the sale is invalid, notwithstanding he acted in good faith, at least where the contest is between the owner and purchaser."

In the present case there was no necessity of a sale. The plaintiff disproves this necessity, and shows that the vessel and cargo both might have been saved and taken to Key West; and both the captain and he did take a large portion of the cargo from the vessel to that place. If a part of the cargo could be saved, the presumption is undoubted that the whole might have been. The plaintiff himself states, and then proves, that both vessel and cargo could have been got off and taken to Key West. This being so, the captain was under no necessity of selling, and consequently had no power to sell. If he had no power to sell, he could convey no title. It follows that the plaintiff took no title, and now has none to the property for which he claims pay.

It is no answer to say that the owner is not here contesting his right. He may come, and might do so after payment to the plaintiff. The facts now proved would show the property to be his; and if any one is to be paid, it should be him. It is an answer to the plaintiff when his evidence shows that he has no title against the owner. He can then have none against any one else.

SECOND. *The proceedings in the matter of the appraisal of the damages sustained by the plaintiff are no evidence of such damages.*

These proceedings are found from pages 6 to 9 in the record, and have no more legal validity than the like statement from any other persons. The judge was not authorized to appoint persons to ascertain the amount of loss sustained. The petition shows that the plaintiff asked for the appraisement, with the view of making the

United States liable, without giving them notice or allowing them to be heard.

Scott, one of the witnesses, who had been a sailor on the Gil Blas, swore to what was on the vessel at some time, but does not state when, and does not assert that he knew what was on board at the time of the burning. He does not mention that there was lead on board.

Cooley says that it was said that there were six tons of lead on board. He also states that "her sails and rigging, or most of them, and about 400 pounds of lead, were brought to Key West previous to the burning." (Record, p. 7.)

Neither of these witnesses give the value of any article on board. Still, Wall and Patterson assume to fix prices of articles which they had not seen nor heard valued, and the condition of which they did not inquire into, and did not know. They did not ascertain whether the articles could be removed, or at what expense. The witness did not furnish them any data on which to make up the valuation presented. They were not authorized by law to do what they did.

Again: There is no legal evidence of this assumed appraisal. The certificate of the county clerk, if genuine, is no evidence of the facts stated in it. His certificate does not prove that the papers were genuine originals, or that the witnesses had signed and swore to the papers, or that the judge had signed the order. These papers are no evidence of anything here, nor is there proof that they would be even in Florida. This court can only receive as evidence papers certified in conformity to a law of Congress, or the rules of the common law, authenticated in the manner pointed out in treatises on evidence.

THIRD. *There is no evidence from which damages can be computed.*

The evidence does not show that the witnesses had any personal knowledge of the quantity of lead or pig iron on board, and they could not have known. No witness affixed any value to one of the articles said to be on board the vessel. The court cannot, from the evidence, determine the quantity or the value, at the place where the vessel lay, of the things on board. The size and weight of the anchors are not given. Neither the length nor weight of the cables is specified, nor the size or quantity of sail or rigging. No evidence is given of the value of the water casks. There is no proof of the value of these things at Key West or other port, nor what it would have cost to take them out of the vessel and transport them to a market. Nor is a value fixed upon them at the place where they lay. Nor is it shown that they could have been sold for a dollar at that place. Nor is there any evidence of the state and condition of one of these articles, nor reason given by the witnesses why these things were left behind, when the sails and rigging, or most of them, and a part of the lead, were taken away and carried to Key West.

From the materials found in evidence in this record, no one can tell what damage the plaintiff has sustained, if any, by the burning of the vessel. The iron, anchors, and cables could not have been injured by burning the vessel, and the lead is not shown to have been

melted or otherwise injured. No effort is shown to remove these things after the hull of the vessel was burnt, although it is quite apparent that they could have been more easily removed after than before the burning, and must have remained so until storms and winds moved the sands where the vessel lay and covered up what remained unconsumed. This is not likely soon to have occurred after the burning in July. It is observable that the two witnesses, Cooley and Howe, who were sworn on interrogatories, although inquired of, were unable to affix any value to the things destroyed. (Record, pp. 22, 23.)

FOURTH. *It was the fault of the plaintiff that he did not secure the articles uninjured by the fire before they became totally lost, and his omission to do so is a bar to a recovery for them.*

The burning seems to have been done about the 25th of July, 1836. The wrecker (Cooley) employed by the plaintiff was present, and piloted the "Motto" up to the place where the Gil Blas lay. He did not object to the burning, nor intimate that anything more could be profitably saved. Howe seems to have had some special relations with the plaintiff, as he took a certificate of the burning to forward to him, (Record, p. 23;) and it is to be presumed that it was immediately sent to him. But no effort was made by the plaintiff, nor by Howe or Cooley in his behalf, to save the property which remained undestroyed. There is no evidence when the wreck became covered with sand; nor is there any that there were blows or storms soon after, which would be likely to cover her. There is no evidence that the plaintiff ever went there in search of his property, or sent there to see if anything could be saved. He seems to have made no effort whatever to save what remained uninjured. The next we hear of him he is preparing to make a claim against the United States for the property claimed, and is preparing and obtaining an ex parte valuation of it.

The United States, if accountable for the burning, are not responsible for the loss that may have resulted from his abandoning that part of his property which might have been saved by making proper exertions. They could only be called upon to indemnify him for the destruction of such of his property as the fire destroyed, and not to pay for such as remained uninjured, and might have been saved by proper exertions.

FIFTH. *At the time of the burning of the vessel the property had been abandoned upon territory of the United States, and therefore they are not liable for destroying it.*

The territory where the Gil Blas was stranded belonged to the United States, and they had a lawful right to control it. Property lying there in an apparent derelict state for a long period they had a right to treat as abandoned; and, if abandoned, to use or destroy it. This vessel was stranded in the fall of 1835, and her cargo had been nearly all taken away by the wreckers for the use of themselves

salvors and for the owners. At a subsequent period the sails and rigging, or most of them, and some lead, were taken away, and then the vessel laid wholly unprotected until the next July. This is conclusive proof of abandonment. There is not a particle of evidence that the plaintiff, at the time of the burning, contemplated the getting off the hull or removing any more of the rigging or cargo. All laid there a perfect derelict and wholly abandoned. Under such circumstances, the United States had a right to take possession and use or destroy. Abandonment is determined, not by what the party may in fact intend, but by his acts, which others can see and observe, and from which they alone can act; and, when it has once taken place, it cannot be recalled.

SIXTH. *If the plaintiff became the purchaser of a foreign vessel and cargo on board, the presumption is that the latter was a foreign production; and if so, was subject to duties, for which the plaintiff is responsible; and not having been paid, the same was forfeited to the United States.*

The act of the 3d of March, 1825, (4 U. S. L., 133,) section 2d, provides:

"That all property, of every description whatsoever, which shall be taken from any wreck from the sea, or from any of the keys or shoals within the jurisdiction of the United States on the coast of Florida, shall be brought to some port of entry within the jurisdiction aforesaid;" that is, "in any court of the United States or Territories thereof having competent jurisdiction," as specified in the first section.

Who may be wreckers is provided by the act of 23d May, 1828, (4 U. S. L., 292.)

The act of March 1, 1823, (5 U. S. L., 736, § 21,) requires all goods taken from wrecks to be regularly appraised, with reference to the payment of duty.

Where the goods are raised from a vessel that has been sunk two years "in any river, harbor, bay, or waters" within the jurisdiction of the United States, and has been abandoned by the owner, they may be entered free of duty. (5 U. S. L., 609.)

If the plaintiff owned imported goods, he was bound, under the general law, to report and enter them at the nearest custom-house, and pay duty thereon.

By the then law, (4 U. S. L., 587,) the duty on anchors made of iron was two cents, and on cables three cents per pound, and on iron in pigs fifty cents per hundred and twelve pounds. The duty on lead in pigs and bars was three cents per pound. There were also duties on manufactures of hemp and woad. If accurately ascertained upon all the articles now claimed to have been destroyed, these duties would probably amount to near or quite as much as the present claim.

There is no evidence that the duty on these articles was ever paid, nor that there were any steps taken towards making an entry. This not having been done, the goods became forfeited to the United States, and they ceased to be the property of the plaintiff. They became

forfeited by the omissions of the party. The rights of the United States became perfect without an adjudication in an admiralty court, which would have been nothing more than indisputable evidence of the forfeiture, which is now proved in another way, but one equally as effectual. The question of forfeiture is now triable, when the plaintiff claims to be owner. He cannot be owner if the goods have been forfeited under a statute; and, if not the owner, then he cannot have sustained damages by the destruction of what was not his.

SEVENTH. *As the brig Gil Blas and her cargo were situated, under circumstances which existed in Florida, the United States were authorized to destroy both to keep them from falling into the hands of the enemy.*

The plaintiff has not shown that either the vessel or cargo was in his possession, or under his control, at the time of the burning. But, on the contrary, the last time that he, through his agent, Cooley, attempted to rescue and save the cargo, the Indians, by their violence and murders, put an end to the enterprise, and it was given up and abandoned. There is no evidence that the effort to save the goods was ever renewed. The plaintiff yielded to the adverse circumstances which surrounded the matter, and made no further effort.

We know from history, as well as from this record, that an Indian war existed in Florida, and that this part of it was in the possession and under the control of the Indians at that time. The Gil Blas was stranded opposite and near to the centre of the Everglades, from which our troops could not drive them. There the brig lay, after having taken from her the valuable part of her cargo, sails, and rigging, and everything that seemed to be worth incurring the expense of saving. Both the government and the plaintiff knew of this state of things. To prevent the Indians from supplying themselves with lead to aid in prosecuting the war, the United States officers went from Key West to the place where the vessel lay, being piloted by the plaintiff's agent or employé, and set fire to the vessel, which could not have been saved at that time. Lieutenant Lieb states that he and others, in the summer of 1836, "found the brig Gil Blas on shore about Cape Florida, said to have on board several tons of lead, and, apprehensive she might be found by the Indians, we burnt her; that the party could not at that time have saved the brig." (Record, p. 15.) He adds, that he could form no opinion of the inventory or appraisement, nor the claim therein made.

It is clear that they found her as a derelict, not in possession of any one; and that he did not see the property mentioned in the inventory, and had only heard of the lead said to be on board.

The plaintiff, if the owner, had left this property in a condition which was dangerous, with reference to the war and the enemy, without providing against its being converted into an instrument of destruction. Finding it in that condition, the officers of the United States stationed on that coast to aid in ending the war were in duty bound to destroy it. These officers judged of the necessity, and there is no evidence that they did not judge honestly and rightly, even if their decision could be now reviewed. It was not taking private

property for public use; but it was simply preventing private property, if it remained such, being taken by the public enemy to be used against private citizens and against the government. These officers had a right to destroy the property to prevent these consequences.

EIGHTH. *If the officers who burnt the brig were not authorized so to do as a part of their official duty, then they, and not the United States, are liable.*

If the destruction of the brig was legal, then plaintiff has no just cause of complaint; but if it was illegal, his remedy is against those who committed the illegal act. The United States are not responsible for the torts or illegal acts of its officers not in the line of their duty. They act by their agents, and only authorize them to perform lawful acts. When they go out of the line of their duty and do what is illegal, they alone are responsible for what they do. There is no law authorizing an officer to perform an illegal act.

NINTH. *This case does not arise under any law of Congress, or rule of a department, or contract, express or implied, and therefore the plaintiff cannot recover.*

There exists no law under which the plaintiff can recover. It is not within the cases where this court can determine that damages can be awarded. If it was a case of taking private property for public use, still, without legislation to carry the Constitution into effect, this court cannot award damages under it. Congress alone can prescribe the mode of action, and clothe the court with the power of executing the Constitution. That instrument addresses itself to the legislature, and the latter must provide for the execution of the Constitution. The government may take property, but it is for Congress to provide for the payment. No such provision has been made in this case. This court cannot supply for the defective action or omission of the legislature. It can only declare the rights that exist under present laws; and if there are none provided in this case, then it must so declare, and leave the party to go to Congress, which alone can make a law to confer the right now claimed.

R. H. GILLET,
Solicitor.

Dated June 11, 1859.

IN THE COURT OF CLAIMS.

June 14, 1860.

JOHN P. BALDWIN *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the court.

This case was referred to this court by an order of the Senate, made January 11, 1858.

The facts are, that in 1835 the Spanish brig Gil Blas was wrecked on the beach of Florida, about twenty miles northward of Cape Florida, and was shortly after, with her appurtenances and cargo, sold at auction at Key West by her captain, and purchased by the petitioner, who proceeded to take possession of her, and employed persons to remove from her her equipment and contents. She had on board of her a quantity of lead, iron, ballast, anchors and chains, sail rigging, and water casks.

In 1836 she was burned by the officers of the United States to prevent the lead and other contents of the vessel from falling into the hands of the Indians, with whom the country was then at war.

The vessel and her contents were thus lost to the petitioner, who claims an indemnity for his private property taken for public use.

It is objected that he does not prove title. But the vessel, her appurtenances and cargo, were purchased by the petitioner at public auction, (p. 12,) and he was in possession of her; and this is title enough against a stranger not claiming title, for it shifts the burden of proof.

It is then said that, if the act of the officers who destroyed the property was unauthorized, they and not the United States are liable. But the authority of the officers is presumable from the circumstances of the transaction. They were acting in their official capacity in the war which the country was then carrying on against the Indians, and their purpose of destroying the property to prevent the lead and other munitions of war from falling into the hands of the enemy was declared at the time.

It was argued that the United States had a right to destroy the property, because in its position "it was dangerous with reference to the war and the enemy." The United States had the right to destroy it, but not because it was a nuisance, in its nature pernicious to everybody, and therefore abatable by anybody, but only for the public good, and then subject to the constitutional provision.

It then was contended that the case shown was not one of taking private property for public use, but "simply preventing private property being taken by the public enemy to be used against private citizens and against the government;" but this was a public use, and the cost of it is to be borne by the public, who were benefited by it. We think the case is within the provision of the Constitution, on which the petitioner relies.

It was then contended that this provision of the Constitution could

not avail the petitioner because there was no act of Congress carrying the provision into effect; but none is necessary. The Constitution imposes on the United States the obligation of furnishing an indemnity for the property taken, and upon that obligation an implied contract arises, upon which, under the statute constituting this court, a claim against the United States may be maintained here.

We are of opinion that the petitioner is entitled to recover; but he has not produced any evidence by which we can adjudge the value of the property destroyed or the measure of the indemnity claimed.

The record shows that in 1838, on the petition of the petitioner, the judge of the county of Monroe, in the Territory of Florida, appointed appraisers to ascertain and certify to him the loss of the petitioner; and their return, certified by the affidavit of one of them, and signed by both, (p. 13,) was as follows:

6 tons lead	$480
5 tons kentledge	100
30 water casks	75
3 anchors	75
2 chain cables	300
Hull, sails, and rigging	170
	1,200

As the appraisers were the appointees of a court, and the performance of their duty wears the fairness of a judicial procedure, this testimony may be satisfactory, and better than any that is likely to be obtained now. But it is not admissible, because it is not taken in due form or on due notice, and it cannot be considered by the court nor used against a party objecting to its use.

The depositions of the commissioners show that they never were on board the brig and never saw the articles. They have, therefore, no personal knowledge of their quantities.

The petitioner claims, for six tons of lead, $480.

As to this, Cooley says in his first deposition, (p. 23,) "from the lapse of time I am unable to particularize as to value or different articles, but would refer the court to the answers made by me to interrogatories propounded to me soon after the burning of said brig;" and in his affidavit, made in 1838, (p. 7,) he testifies that the brig was burned "for the purpose of preventing the Indians from procuring a quantity of lead which was *said to be in her*, (six tons.) She also had on board about five tons of kentledge, thirty water casks, three anchors, and two chain cables.

This testimony as to the lead is stated as hearsay merely. As to the other articles, it is stated positively and as a matter of personal knowledge, and was perhaps sufficiently definite as to quantities to make a prima facie case.

In his deposition last taken Cooley is asked: "Did you see lead in said vessel; and did you weigh it, or how do you know how much there was on board?" (5th cross-inter.) He answers: "I saw a quantity of lead in said vessel's hold. I did not weigh it. I was in-

formed by the master that there was six or eight tons. It was in large pigs." This answer certainly does not show any personal knowledge as to the quantity of lead—it disclaims it.

Then the petitioner claims, for five tons of kentledge, $100.

As to this, Cooley is asked, "Did you weigh it, or how did you ascertain the quantity of it?" He answers: "I did see kentledge and iron cannon balls. The kentledge was in pigs, and in the vessel's hold. I did not weigh it." This does not show any personal knowledge, nor any means of such knowledge; and as the question called for a statement of such means, the implication is, he had none; and this indicates his affidavit before referred to was made without such means, and impugns the reliability of that.

Then the petitioner claims, for two chain cables, $300.

As to this, Cooley is asked, (7th cross-inter.,) "Did you see any, and how many, chain cables on board of said vessel; and of what size, form, and description, and length, and weight; and how do you know their weight?" He answers: "I saw two good chain cables, such as suitable for the anchors. One chain and anchor was run out astern to keep her from going further up on the shore. The anchor attached to this chain I did not see. I do not remember their length or weight."

Rigby says to the same question, "I saw two chain cables on board, one of which was run out aft, as already stated. I don't recollect their size or weight. She was a Spanish vessel, and had heavy ground tackle."

This is all the evidence in the case as to the length, size, or weight of the chain cables; and it does not prove their quantity, or furnish any basis for their valuation.

Then the petitioner claims, for three anchors, $75.

Cooley, in his affidavit, specifies *three* anchors, but when asked in his deposition last taken, (6th cross-inter.,) "Did you see any, and how many, anchors on said vessel; and of what size, form, and weight were they; and were they perfect or defective, or how otherwise?" answers, (6th answer:) "I saw two good anchors on board; their size and weight such as a vessel of her tonnage usually carries." And in answer to the same question, Rigby says: "I think there were two anchors on board; am positive there was one on the bow; also one attached to a chain carried out aft."

Thus these two witnesses concur, when directly questioned as to the number of anchors, in there being two anchors; and this testimony certainly tends to show there were only two, while the return of the commissioners specifies three anchors, and gives $75 as the valuation of the three. Cooley, in his affidavit, also specifies three anchors; so that, in this respect, that affidavit is impugned in accuracy by the extracts from the depositions above statod. As the whole testimony leaves the number of anchors in doubt, the valuation of the commissioners cannot be adopted.

The petitioner claims also, for hull, sails, and rigging, $170.

Cooley is asked, (3d cross-inter.,) "Were there any sails or rigging on said vessel; and if so, how many sails and what rigging?" and he answers: "There were all her sails and rigging there, beside a suit of

spare sails, which I brought to Key West." But in his affidavit he says: "Her sails and rigging, or most of them, and about four hundred pounds of lead, were brought to Key West." On this evidence the quantity, as to the sails, cannot be ascertained, and there is no other evidence in relation to it. Then the sails, rigging, and hull are put into one valuation by the commissioners, and it cannot be told what part of that was applied to the sails.

Then the petitioner claims, for thirty water casks, $75.

This is the precise number stated in Cooley's affidavit; but we think the examination we have above made of this document shows that it cannot be relied on as stating quantities on personal knowledge; and both Cooley and Rigby state in their depositions that they cannot *now* specify the number of casks; and Rigby testifies they were in the hold of the vessel, and Cooley testifies that some were on deck, but most of them were in the hold.

On the whole case we find that the evidence does not establish the quantities claimed nor any quantities, and this must be done, and by witnesses testifying on their personal knowledge; and until it is done there is nothing to which to apply the valuation of the commissioners, which is all their testimony can tend to establish.

We are of opinion that the petitioner does not show the amount of relief to which he is entitled by testimony on which this court can act. This is the result of a strict application of that rule of evidence which requires that witnesses should state facts on their personal knowledge; but this rule cannot be dispensed with by a court of law or equity, whatever may be the actual merits of the case before it.

The evidence proves clearly that the property of the petitioner was destroyed by the United States and "taken for public use," and that his application for relief has been pending in Congress till proof of it has been lost by the death or forgetfulness of witnesses, is probable. And the course of the petitioner in Florida, in applying to a court of the United States for commissioners to ascertain his loss, indicates a fair purpose on his part, and the report of the commissioners, (one of them the collector of the port and the other a merchant in the place,) acting officially as officers of the court—taking testimony under oath near the time and on the spot—might well, if admissible, have great weight, and there is nothing in the evidence to impugn its fairness; but, for the reasons stated above, it is not efficient evidence here.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 260.

LYDIA CRUGER, EXECUTRIX OF MOSES SHEPHERD, DECEASED.

[To accompany Bill H. R. C. C. No. 103]

DECEMBER 18, 1860.—Reported from the Court of Claims, and, together with the accompanying bill, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

LYDIA CRUGER, EXECUTRIX OF MOSES SHEPHERD, vs. THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief.
3. United States soliciter's brief.
4. Opinion of the court allowing claimant $18,124 34.
5. Bill for relief of claimant.

There is a large mass of papers relating to this claim in the office of the clerk of the Court of Claims, received from the House of Representatives and from the Treasury Department, for which not a receipt was given by the clerk. As the opinion of the court is founded chiefly on documents already printed by the House of Representatives, the papers above mentioned are retained as subject to the order of the respective committees of the two houses of Congress.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of December, A. D. 1860.

[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the judges of the United States Court of Claims:

The petition of Lydia Cruger respectfully represents: That your petitioner, late the wife of Moses Shepherd, deceased, was appointed by the last will and testament of said Shepherd his sole executrix; that letters testamentary, in due form, were issued to her by the circuit court for Ohio county, Virginia, and that she since intermarried with Daniel Cruger, who is also dead.

Your petitioner shows that on the 17th of February, 1817, the said Moses Shepherd entered into a contract with Eli Williams, the agent of the United States, to construct certain mason-work, including several bridges, upon the Cumberland road, by the terms of which contract the work was to be completed in such manner and form as the superintendent might direct and approve; no mason-work was to be paid for except as should be approved by the superintendent; the United States were to be at full liberty to change their locations and the size of bridges and culverts, as pointed out in the grading notes, as the superintendent should direct; and in consideration of the work being so done, the United States were to pay to said Shepherd $3 25 for every perch of mason-work, reserving at all times such sum as the superintendent should conceive necessary to the United States for the due performance of the contract—the sum so reserved to be paid to said Shepherd, his executors or administrators, as soon as the work aforesaid should be completed and approved as aforesaid, and the whole work was to be completed on or before the first day of March, 1820; that said contract was approved by the President of the United States, and a copy of it, in extenso, will be found in House document No. 253, of the first session of the 20th Congress, to which your petitioner refers.

She further shows that Josiah Thompson was appointed by the President superintendent of the western section of the said road, within which was Shepherd's contract; that by the terms of said contract, connected with the instructions given by the Secretary of the Treasury, with the President's approval, the said Thompson was constituted the sole judge of what mason-work was necessary—of its sufficiency, quality, and location—and sole agent to measure and determine the quantity of the work completed, and to pay for the same by drafts on the treasury; that Thompson continued in office until October, 1819, when he was removed; that Shepherd meanwhile entered into contracts with numerous persons to do parts of the work, and had it completed in the year 1819, most of it before Thompson's removal; that the mason-work directed by the superintendent had been mostly measured, approved, and accepted by him before his said removal, and a large proportion of it paid for by his drafts on the treasury in favor of Shepherd or of his sub-contractors.

And your petitioner further shows that, in consequence of certain unfounded and malicious representations by interested parties, exciting a suspicion of collusion between said Shepherd and the superintendent, Thompson, for the purpose of defrauding the government, the Secretary of the Treasury withheld the balance due said Shepherd under

his contract; and three commissioners, Messrs. Abner Lacock, Thomas Wilson, and Thomas McGiffin, were appointed to remeasure the work constructed under Thompson's superintendence, and investigate the alleged fraud, which they did; that failing, after this, to get his accounts settled at the treasury, Shepherd petitioned Congress for relief in 1824; that at that and the succeeding session favorable reports were made upon the claim in the House of Representatives, negativing entirely the charges of fraud; and in March, 1825, a bill was passed for said Shepherd's relief.

Your petitioner further shows that the said bill did not provide for all the claims of said Shepherd under his said contract, but left him still a creditor of the government in the following particulars:

1. For the difference in the contract price of the work made by the measurements of the superintendent and of the commissioners. The commissioners reported that, in the mason-work which had been measured and accepted by Thompson, there was less by 8,715 perches than Thompson had returned; and this report kept alive the suspicion of fraud, and prevented the settlement of Shepherd's account at the treasury. The committees of the House of Representatives, on whose reports the bill aforesaid was based, negative the charges of fraud, but, in making up their report, took into view only so much of the difference between the sums due, according to the measurements of the superintendent and the commissioners, as was proved to have been paid to sub-contractors, amounting to the sum of $7,640 41. Your petitioner insists, as did said Shepherd, that the residue of said difference is strictly due from the United States; that by the contract the measurement of Thompson, the superintendent, was final; that in point of fact it was made during the progress of the work, and was correct; that the measurement of the commissioners, after the work was completed and filled in, could not be correct, and was wholly erroneous; that it was ex parte, unfair, and made under a strong personal bias against Shepherd, and is utterly unreliable; all of which, she submits, is established by proofs on file; and that other contractors upon the road were paid according to the measurement of the superintendent, upon the recommendation of one, at least, of the same commissioners, although his measurement largely exceeded that subsequently made, of the same work, by the commissioners.

2. For an excess retained as a "deduction for unnecessary extension of the length of the road." This was occasioned by the change of the site of a bridge across Little Wheeling, Shepherd agreeing to make the increased distance at his own expense. The commissioners mistook the established location of the road, and made the increased distance by the change of route fifty-three rods, the contract price for which amounted to the sum retained; whereas, in fact, said increased distance amounted only to thirty-eight and a half rods, so that there was deducted too much, by the contract price of fourteen and a half rods, or $406, which, therefore, is still due.

3. For cost of a wall and culvert near Shepherd's house, constructed under Thompson's superintendence and direction, which, however, had not been measured before his removal, and which the commissioners refused to measure. The dimensions not being known at the

time of the settlement with Shepherd under the act of 1825 for his relief, this wing and culvert were not allowed for.

4. For a wall built and removed by directions of the superintendent, but not measured by him or the commissioners.

5. For an amount retained for repairs for the Broken-back bridge, which has never been repaired, but which bulged out in consequence of the thinness of the wall directed to be built by the superintendent, and not of any defect in the workmanship or material, and for which therefore the contractor ought not to suffer.

6. For 1,793 feet 3 inches of parapet coping not provided for by the contract, but required by the superintendent under written instructions of the Secretary of the Treasury, at $2 per foot.

7. For cash paid for extra work on pavement under Stewart's bridge, $30.

8. For costs paid by Shepherd in suits brought against him in consequence of the failure of the government to pay him, as it had contracted to do.

9. For interest on the sums withheld.

Your petitioner further shows that at the session of 1825–'26 the said Shepherd presented a further petition to Congress for the balance of his claims as aforesaid; that said petition was referred to the Committee on Roads and Canals in the House of Representatives, and said committee reported at length in the petitioner's favor, and a bill for his relief; that at the same session a resolution was passed by the House of Representatives, directing the Secretary of the Treasury to appoint a suitable person to take depositions of witnesses in behalf of the United States touching the claims of Moses Shepherd, Daniel Steenrod, and Daniel Loomis, late contractors on the Cumberland road; that in January, 1827, James Collier was appointed for this purpose, and made a report, which, with the testimony taken, will be found in the House document before referred to.

Your petitioners further show that in 1828 a bill was passed for Shepherd's relief in the Senate, and sent to the House of Representatives, where it was referred to the Committee on Claims, and that said committee reported adversely upon it upon grounds which, your petitioners submit, are utterly erroneous and untenable; that soon after said Shepherd died; that after her intermarriage with said Cruger, your petitioner and said Cruger again petitioned Congress for relief at the session of 1837–'38, and the claim has been repeatedly referred to the Committee of Claims in the House of Representatives, but no further action has been had upon it.

Your petitioner further shows that no part of the claim has been assigned.

And your petitioner states her claim as follows, the amounts being substantially the same as claimed by Moses Shepherd:

For difference of measurement between superintendent and commissioners, 8,715 perches, at $3 25.....	$28,323 75	
Less amount heretofore paid.....	7,640 41	
		$20,683 34

For excess deducted for increased distance between old and new routes	$406 00
wing-wall and culvert near Shepherd's house	378 60
side-wall built and removed by superintendent's order	485 50
amount retained for repairs of Broken-back bridge	961 00
1,793 feet 3 inches parapet coping, at $2	3,586 50
extra work paid Smith	30 00
costs of suit claimed as damages for breach of contract	275 82
	26,806 76
For interest on this amount, say from January, 1820, to January, 1856, 36 years	57,902 58
interest on $33,674 36 paid in 1825, from the date when due, say five years	10,102 30
E. E.	94,811 64

Respectfully submitted.

Re-petition of Lydia Cruger, executrix of Moses Shepherd.

In this case the petitioner respectfully asks leave to amend her original petition by stating, in addition to the statement therein made of the action in Congress upon her claim, that the claim was rejected in the Senate at the 1st sessions of the 23d and 24th Congress, a fact of which she was not aware when said original petition was drawn.

JOHNSON & COX,
Attorneys.

IN THE COURT OF CLAIMS.

THE PETITION OF LYDIA CRUGER, EXECUTRIX OF MOSES SHEPHERD.

Brief of claimant.

(See the petition for the facts.)

In this brief reference will mainly be made, for evidence, to two documents, viz: House Doc. No. 253, twentieth Congress, first session, and House Doc. No. 202, twenty fifth Congress, second session.

Upon a fair construction of the contract, and the instructions of the Secretary of the Treasury, (Doc. 253, sup., p 9, 164,) the superintendent was the sole judge of the quantity and sufficiency of work done, and his measurement is final, in the absence of fraud. By this measurement Shepherd was entitled to be paid for 8,715 perches of mason-work more than he has been allowed for. (Id., pp. 151, 162.)

The alleged evidences of fraud will be examined.

I.—The alleged gross overmeasurements of the superintendent.

The report of the commissioners appointed by the Secretary of the Treasury, (Id., p. 11,) being an *ex parte* statement, not under oath, is not evidence.

The evidence taken by these commissioners, and that taken by James Collier, in pursuance of a resolution of the House of Representatives, is not considered admissible against the claimant, but in fact is more favorable than adverse to him.

It shows the commissioners who remeasured the work to have been hostile and prejudiced. (Id.. pp. 125, 8.) Their report is pronounced unreliable by a committee of the House of Representatives. (Id., pp. 149, 150.)

There is no evidence to sustain the measurement of the commissioners, except the deposition of McGiffin, one of them, that he believes it to be substantially and essentially correct. He had been a contractor, and was interested in diverting from himself any suspicions of collusion with the superintendent.

On the other hand, it is shown to be incorrect by Gilchrist, (Id., pp. 125, 8,) for whose character see pp. 53. 57; and by Skinner, (Id., p. 89, and Doc. 202, sup., p. 58;) and Thompson's measurement is sustained by his deposition, (pp. 130, 136, of Doc. 253, sup..) and by Killen's. (Id., pp. 123, 166, 7, 9, 174, 5, 6, 7, 180, 1, and Doc. 202, pp. 25, 39, 60.)

Collier, in his report, (Id., p. 147,) misquotes the evidence of Gilchrist and Killen.

An alleged contradiction between Thompson and Killen is explained, (p. 136,) as also the allegation that Thompson received statements from the workmen.

Gilchrist's testimony, as to double allowance for bridge opposite Gooding's, is also misquoted by Collier. (See on this Doc. 202, sup., pp. 34, '5, '6.)

If the alleged overmeasurements were evidence of fraud, it would apply to all the contracts, for, according to the commissioners, the work of all fell short; but the other contractors were paid without dispute. (See cases of Loomis, Skinner & Loomis; John McLure and George Dawson, Doc. 202, sup., pp. 49 and 54.)

II.—The facts relative to the contract bridges, Doc. 253, sup., p. 5.

The alleged statements of Williams are not evidence against Shepherd, (1 Greenl. on Ev., §111, 177,) and are consistent with good faith. The facts probably were that proposals were invited for bridges with one arch, and the plan was changed just before the sale. (See Thompson's deposition, Doc. 253, p. 133; Fay, p. 96; and Doc. 202, p. 4.)

III.—The size of the bridges enlarged immediately after the contract. (Doc. 253, p. 5.) There could be no fraudulent object in this. The work has been accepted and paid for. (See Doc. 202, p. 5.)

IV.—Change of route. (Doc. 253, p. 5.)

The facts seem to be that a change from the original hill route was determined on in Washington, in case the owners on the hill would not release, which was kept secret in order to get releases from the

owners on the creek route; that it was ascertained on Saturday, November 21, 1816, that the latter would release, and then the change was made known to at least three contractors; that the inquiries made of Thompson were before this, and his concealment of the change was for the above reason.

His acts would not be evidence against Shepherd.

The creek route was taken at lower rates than any other. (See Id. pp. 97, 132; and Doc. 202, sup., p. 9.)

V.—The joint purchase of Craig's farm by Thompson and Shepherd. (Doc. 253, p. 103.)

They had a right to speculate on the chance of a location by the creek. The location was not made by Thompson, but was made before he was employed by the government. (Doc. 202, pp. 10, 11, 49.)

VI.—Change of bridge near Shepherd's house. (Doc. 253, p. 5.)

The change was made by order of the Secretary of the Treasury, and cost the United States nothing. (Id., p. 131.) The reason why the mill-dam route was considered best by witnesses was the saving in distance, (see Skinner, Id. 77;) but the increased distance was at Shepherd's expense, and no one can complain if his convenience was consulted. (See Killen, Id., p. 124; and Doc. 202, p. 11.)

VII.—Thompson's interest in Shepherd's sub-contracts. (Id.)

A single instance of mere friendly interest is stated by Hawkins, (p. 109,) but contradicted by Thompson, (p. 133,) and an instance of want of interest is stated by Mayes. (Id., 107.)

VIII.—Thompson's refusal to be cross-examined by the commissioners. (Id. 6.)

This is no evidence against Shepherd, and is fully explained by Doddridge and Caldwell. (Doc. 253, pp. 100, 105.) He voluntarily attended before Collier for the United States.

IX.—Thompson's consultations with Shepherd's counsel. (Id.)

This would be natural when Thompson was charged with collusion with Shepherd, but the fact is denied by Doddridge. (Id. 102.) No aid was furnished, except for the cross-examination of Skinner, who was understood to have reflected upon Thompson.

X.—Refusal of Woods and Atkinson to answer questions, &c.

This is no evidence against Shepherd, and is, besides, untrue. Both witnesses deny all knowledge of fraud or corrupt connexion between Thompson and Shepherd. (Id., pp. 58, 60, 70.)

XI.—Advances to Thompson. (Id.)

A small amount loaned, secured by a deed of trust. (Id. 69.)

XII.—Advances to Shepherd after declarations that none would be made. (Id.)

The declarations at the sale were sincere, and the advances an after-thought. The same were made to other contractors. (Doc. 202, p. 15.)

Evidences against the charge of fraud.

The rate at which the road and mason contracts of Paul and Shepherd were taken, (Doc. 202, pp. 18, 19;) the superior execution of the work, (Doc. 253, pp. 54, 55, 70, 104;) Shepherd's embarrassments,

(Id. 51–'4, 71;) Thompson's do. (Doc. 202, p. 51;) Shepherd's and Thompson's general character, (Doc. 253, pp. 53, 56, 57, 58, 71, 104; and Doc. 202, pp. 21, 22;) the clearness of Thompson's testimony, and that of Woods and Atkinson, as to whose characters, (see Doc. 253, p. 53,) and their exhibition of Shepherd's books; the differences between Thompson and Shepherd, (Id. 57, 104, and al.;) Thompson's concealment from Shepherd of Skinner's proposition, (Id., p. 68, 102, 135;) changes in culverts, noticed by the commissioners, to Shepherd's disadvantage, (Id. 52;) Thompson's withholding Shepherd's money when he might have drawn in his favor on the treasury for most of it, the work having been nearly completed when he was removed; and, finally, the failure of the government to find any proof after so long an agitation of the claim before Congress.

Items of the claim.

1. Difference between measurements of Thompson and the commissioners, 8,715 perches of mason-work. Thompson's measurement is correct, and this item should be paid accordingly.

2. Excess of distance retained for by the government.

The sum of $1,490 62½ was retained on account of the increased distance occasioned by a change of route, which was to be made at Shepherd's expense. (Doc. 253, p. 158.)

The commissioners mistook the original location, and made the increased distance too much by 14½ poles, retaining an excess of $406. (See testimony of Gilchrist, Id., pp. 126, 168; Caldwell, p. 175; Skinner, p. 77.)

3. Wing wall and culvert near Shepperd's house, $378 60. (See Gilchrist, p. 126; and Thompson, p. 131.)

4. Side wall built and removed, $485 50. (See affidavits of Clark and Chamberlain, Id., pp. 171–'3.)

5. Amount retained for repairs of Broken-back bridge, $961. (Id., p. 158. See testimony of Thompson, p. 134; and Gilchrist, p. 127.)

The 5th item spoken of in Collier's report is not in this account.

6. Money paid extra work to H. Smith, $30. (See affidavit, Id., p. 177.)

7. Coping, 1,793 feet 3 inches, at $2, $3,586 50. (See Thompson's instructions, p. 165; Gilchrist's testimony, pp. 127–'9; Thompson's, pp. 134–'7.) The price paid to others the same. (See McLure's settlement, Doc. 102, pp. 54, 55.)

8. Costs. (Doc. 202, p. 52.)

9. Interest. (See case of McLure above, and brief in Caseau's case, No. 167, General Docket.)

JOHNSON & COX,
Attorneys.

IN THE COURT OF CLAIMS.—No. 242.

LYDIA CRUGER, ADMINISTRATRIX OF MOSES SHEPHERD, *vs.* THE UNITED STATES.

Brief of United States Solicitor.

This claim originated nearly forty years ago, and has been before Congress for more than thirty years. Unfortunately a question was made by the treasury as to the integrity of the claimant, and it is no doubt owing to this circumstance, principally, that he and his widow have prosecuted the claim with such pertinacity, regarding success at once as the means of vindicating his reputation and of recovering a large sum of money. The evidence has been printed in the public documents; and for convenience, and on account of the dilapidated condition of the originals, it has been agreed that the affidavits and other evidence may be read from the printed document—that is, Rep. Com., No. 253, Ho. Reps., 20 Cong., 1st session, and Ex. Doc. No. 202, Ho. Reps., 25 Cong., 2d session. They will be briefly referred to hereafter as report 253 and document 202.

On the 17th of February, 1817, Moses Shepherd entered into a contract to execute mason-work specified, and such other work as the superintendent should direct, within a specified section of the national road, from Cumberland to Wheeling. (Rep. 253, p. 9.) Josias Thompson was shortly after appointed superintendent of the construction of that portion of the road on which Shepherd's work was to be done. As the work progressed, Thompson measured it, and drew drafts upon the treasury in favor of Shepherd, who, by the terms of the contract, was entitled to be paid in full for the work done, excepting such amount as the superintendent should think proper to reserve until the completion of the whole work. The work of Shepherd was to be completed on or before the 1st of March, 1820.

On the 5th of October, 1819, the Secretary of the Treasury, believing Thompson unfaithful to his trust, removed him from office, and appointed a Mr. Shriver in his place. (Doc. 202, p. 26.) The Secretary also appointed three commissioners: Messrs. Lacock, McGiffin, and Wilson, to measure the work done by Shepherd and other contractors, as well the work which had been measured by Thompson as that which had not yet been measured; for Shepherd had not yet completed the work.

The commissioners reported in January, 1821, (Rep. 253, p. 11,) and transmitted their measurements to the Treasury Department. Besides other differences, not necessary now to be mentioned, the measurement of these commissioners fell short of Thompson's measurements to a large amount; they refused to measure some work done by Thompson's direction, judging it to be unnecessary; and they reported certain work, which had been accepted by Thompson, as subject to reduction for bad workmanship.

Subsequently the same commissioners were ordered to take the testimony of such witnesses as Shepherd should produce, as well as

of such witnesses as might be found to testify on the part of the government. This testimony they reported January 19, 1822. (Rep. 253, p. 122.) Some remeasurements were also made during this period, in cases where the correctness of the commissioners' measurements were disputed. (Rep. 253, p. 168.)

Shepherd's account was then settled at the treasury in conformity with their report. (Rep. 253, p. 158.)

Shepherd petitioned Congress for relief. The Committee on Roads and Canals reported (Rep. 253, p. 150) that Shepherd was entitled to be paid for all work, necessary or unnecessary, if directed by Thompson; for all work, good or bad, if accepted by Thompson; and as to the overmeasurements, they reported that Shepherd was entitled to credit for all work, according to Thompson's measurements, where he had paid his sub-contractors according to such measurements. The committee, in conclusion, reported a resolution directing the Secretary of the Treasury to state an account upon this basis; or if he should differ from the committee, then to state the account as to him should appear just and equitable, and to report at the next session.

The Secretary of the Treasury, in his statement of the account, (Doc. 253, p. 156,) appears to have made every allowance recommended by the committee, and added some few items besides. The precise amount reported by him was appropriated by Congress, and paid to Shepherd under an act for his relief, approved March 3, 1825. (6 Statutes, p. —.)

At the next session Shepherd petitioned Congress for further relief, and then, or shortly after, other contractors on the same road presented claims for extra work, &c. This movement resulted in the appointment of a commissioner (James Collier) to take further testimony. He reported on the 23d of January, 1827. (Doc. 253, p. 144.) The whole subject at the next session came before the Committee of Claims of the House of Representatives, who reported against the entire claim. Their report constitutes Report 253, above referred to, and for convenience of reference the following memorandum of its contents is submitted:

	Page.
Report of the committee, May 10, 1828	1 to 7
Shepherd's petition, January 17, 1828	8
Copy of contract, February 17, 1817	9 to 11
Report of commissioners, January 2, 1821	11 to 50
Testimony reported by them, January 19, 1822	51 to 122
Testimony reported by Collier, February 23, 1827	122 to 144
Collier's report, February 23, 1827	144 to 149
Report of select committee, February 8, 1825, reciting and adopting the report of the Committee on Roads and Canals and the account stated by the treasury, 1824	149 to 156
Statement of the account at the treasury, on the principles laid down by the committee, January 18, 1825	156 to 157
Statement of account as previously settled at the treasury	158 to 159
Report of Committee on Roads and Canals, March 27, 1826	160 to 163

	Page.
Letters of Shepherd and Thompson	163 to 165
Affidavits, &c., dated from 1820 to 1828	165 to 181
Items of claim and remarks of petitioner, January 16, 1828	181 to 185

The first item of the claim then and now set up is for the difference between the measurements of the superintendent (Thomson) and the commissioners, (Lacock, Wilson, and McGiffin.) This difference was originally $28,323 75, of which there was allowed on the last settlement $7,640 41, because he had overpaid so much to the sub-contractors, leaving the amount now claimed $20,683 34.

For the petitioner it is contended that the measurements of the superintendent were conclusive upon the government, and especially because Shepherd was entitled to be paid as the work progressed, and a previous measurement was necessary to ascertain the amount to be paid.

1. There is no stipulation in the contract as to the person by whom the work was to be measured. Thompson was not in office when the contract was made, and he was dismissed before the whole work was finished. (Rep. 253, p. 51.) The only reference to him in the contract is to require the work to be done, and to judge of its sufficiency when done. As to ascertaining the quantity, certain modes of measurement are prescribed, but nothing further is provided. Quantity is not like quality, a matter of judgment, but a question of fact; and it is submitted that in the contract this question was left, as it universally is in similar dealings among men, to be ascertained by the parties; or, if they cannot agree, by a jury.

2. The proposition that the measurements of Thompson were conclusive, because they were made the basis of payments, is untenable. Even if payments had been made by Thompson, it would still be competent for the government to show mistake in the quantity of the work paid for; and the measurement of the commissioners is evidence for this purpose.

But no payments were made upon the measurements which the petitioner now seeks to establish. They were made upon other measurements not now before this court. The testimony of Thompson himself, (Rep. 253, pp. 51 and 136,) of Killen, his clerk, (p. 122,) of Skinner, a sub-contractor, (Doc. 202, p. 58,) shows that payments were made as the work progressed upon *partial measurements*, the notes of which, if preserved at all, were only kept to aid in the final measurement. This was not made until "shortly before the removal of Mr. Thompson from office," (Rep. 253, p. 122,) which was in the autumn of 1819; whereas the schedule of payments made to Shepherd shows that payments were made continuously, from the early part of 1817, as fast, if not faster, than the work progressed.

The final measurement, therefore, was made solely with a view to the settlement of Shepherd's account under the contract, as evidence of the amount to be allowed at the treasury, but was not adopted by the treasury, the Secretary preferring to rely on the measurement of the commissioners.

The question, then, of the quantity of work done, stands before

this court as it stood before the treasury and before Congress, to be decided upon the credit due to the testimony of the commissioners on the one hand, and to that of Thompson on the other; and to be accorded upon comparison of the means of information possessed by these persons respectively, the attention given by them to the performance of their duty, and to the fairness with which they were disposed to discharge it.

Upon this issue the petitioner seeks to discredit the commissioners as unfairly biassed against the claimant and Thompson. No ground is assigned for any such bias, except by the suggestion that the commissioners were in the interest of Charlestown, a rival town which had contested with Wheeling the advantage of being the western terminus of the road. No evidence is produced to show that the commissioners were in the interest of Charlestown, or that Shepherd or Thompson favored its successful rival. But if these facts were established, it would still be difficult to believe that any three men, of such standing as we may presume these to have had, would, for any such cause, conspire to abuse the trust reposed in them by the government, and satisfy a private grudge by cheating Shepherd and defaming Thompson. And the manner in which this wrong was to be perpetrated was not one in which prejudice could blind the conscience and warp the understanding. Such might have been the case had the opinions or judgment of the commissioners been involved in the examination; but their only duty in this case was to ascertain the dimensions of certain walls of masonry—to apply the rule and tape-line—and if they sat down less than they found, every false figure was a separate crime, and these crimes were systematically committed, perhaps every day, for many months.

Objection is made to one of the commissioners, McGiffin, because "he had been a contractor, and was interested in directing from himself any suspicion of collusion with the superintendent." If so, how would this interest be best advanced? By proving that the superintendent was a rogue, who had colluded with other contractors to defraud the government, or by proving that he was an honest man, who would lend himself to no such cheating? Clearly his interest was to prove Thompson honest.

It is suggested that their report was a mere ex parte statement not under oath. So was Thompson's; but that Thompson afterwards confirmed his under oath; so did two of the three commissioners, and before the same officer who took Thompson's affidavit, (Rep. 253, pp. 142, 144;) and I ask the court to observe the terms in which Thompson and the commissioners respectively speak as to the accuracy of their measurements.

1. As to the means of information possessed, it is to be observed that the commissioners had the means of attaining perfect certainty. The only difficulty suggested was in ascertaining the amount of work underground in the foundations of walls, &c. But it was *possible* to uncover and expose all the mason-work that had been laid; this was actually done in many cases, and if not done at all, it was because the facts were ascertained in some other way. As to the method pursued by the commissioners, see their report. (Rep. 253, p. 12.)

2. They employed, to aid them as measurer, William Hawkins, who had been the assistant of Thompson, and had been continued in service under his successor. (Rep. 253, p. 14.) This man must have had peculiar knowledge of all the work done, and his interest clearly was to prove the measurements of Thompson and himself to be correct. They also, for a part of the time, had in their employment one Coulter, who is proved to have been a man of peculiar skill as a measurer.

3. They invited Shepherd to attend while his work was being measured. His presence would have been an effectual check upon any false measurement by them. Persons deputed by Shepherd did attend for a while, but were withdrawn by him. (Rep. 253, p. 13; Doc. 202, p. 30.) They afterwards offered to remeasure any work he might be dissatisfied with. (Rep. 253, p. 78.)

4. They had before them Thompson's measurement, and thus at every step they were warned of the issue of fact between them and the claimant. They made detailed statements showing every item in which they differed from Thompson. (Rep. 253, p. 11.) They declare, p. 12, "that whenever we have altered the dimensions from those reported by the late superintendent, it has been from the certain rules of *seeing* and *feeling*, and not from conjecture." They did not aggregate the difference in one gross amount, but furnished the means to the department and to the claimant of tracing their steps, re-examining their work, and pointing out their errors.

5. Shepherd made some such re-examinations on his own account, and some were made by agreement between the Treasury Department and Shepherd. (Rep. 253, pp. 168, 173–4.) These latter resulted in the detection of errors, and Shephard had the benefit of the correction. (Rep. 253, p. 26.) It may be well presumed that as the report of the commissioners pointed out every item in which they differed from Thompson, and as Shepherd disputed some and had them remeasured, those which he did not dispute and have remeasured were correct.

6. J. L. Skinner, a sub-contractor under Col. Shepherd, and by whom a very large part of the work was done, attended the commissioners while remeasuring his work, and was satisfied that the measurement of the commissioners "was fairly and honestly made," though he thought it could not be "strictly accurate," nor could any such accurate measurement be made. See his testimony, (Rep. 253, p. 89–90, questions 1, 2, and 3.) What he thought of Thompson's measurements will be shown hereafter.

The question is not, however, whether the measurement of the commissioners was absolutely accurate, but whether it was more accurate than Thompson's.

Thompson's conduct has been assailed by the department and in Congress as corrupt; and the committee, who made the full report above referred to, (No. 253,) expressed their conviction that there was collusion between Thompson and the contractor, in order to defraud the government. Although this committee seem to have given the subject a very thorough examination, and with the advantage of the additional testimony taken by Collier, the counsel for the government does not deem it just to urge this view upon the court: he is not convinced and does not believe that any such collusion existed; but, at

the same time, it is his duty to say that the admitted transactions between Shepherd and Thompson are such as should impair the confidence which might otherwise be reposed in the accuracy of the measurements made by the latter of the work executed by the former. The first of these was the joint speculation in the purchase of Craig's farm, (petitioner's brief V,) and the successive loans of money made by Shepherd to Thompson, (petitioner's brief XI, Rep. 253, p. 60, answer to question 10, and p. 69, answer to question 23,) for which no security appears to have been given till after Thompson's removal from office.

The sole objection made to the correctness of the commissioners' measurements is, that they could not and did not ascertain the quantity of work which had been covered by earth; while with regard to Thompson's it is said that he made measurements of such work before it was filled in, and that he preserved his notes of such measurements, and referred to them when making the final measurement. But this was certainly not his practice in every case; for he himself says, (Rep. 253, pp. 130 and 136,) that when it was not practicable to measure the foundations, he was in the habit of receiving the amount from the men engaged in building the same under oath, and that "this was done in the foundations of four or five bridges." Killen, his clerk, testifies (Rep. 253, p. 123) that when making the final measurement, they, in many cases, dug away the earth from the foundation. Thompson also (Rep. 253, p. 134) states a remarkable instance of a fraud practiced upon him in the foundation of a bridge, which he says he did not measure until after the bridge was finished.

In what respect, then, had Thompson any advantage over the commissioners in making his measurements? If he had his original notes the commissioners had his corrected notes; and if the commissioners had to dig to uncover the work and test the measurements, Thompson would have had to do the same in every case of doubt, had he not chosen in some cases to take the testimony of men who had a direct interest in making the quantity larger than the truth.

It is clear, from Thompson's own testimony already cited, that he did not measure *all* the work.

Now, as to the work which he did measure. The first fact to be remarked is, that Thompson made generally two measurements. A first or partial measurement, as above explained, was to enable him to draw in favor of the contractor, but it was also to enable the contractor to pay his sub-contractors. (Rep. 253, Thompsons's testimony, p. 51; Killen, p. 123, and the Doc. *passim*.) This measurement "was not relied on as correct." (Killen, p. 123.) But when Thompson came to make the final measurement, the fact that he had given certificates of work done, and that the contractor had paid out money on these certificates, must have exerted an influence calculated to disturb most seriously the accuracy of that final measurement. Throughout the testimony I have not found one single instance in which the contractor complained or a witness alleges that in the final measurement the contractor was allowed less than he had paid his sub-contractor for. If the final measurement had seriously varied from the first measurement, it could not have failed to produce serious difficulties

between Shepherd and his sub-contractors; for nearly all his work was done by sub-contractors. (Report 253, pp. 60, 61, 62, 63, 64.) When the commissioners varied from Thompson that complaint was at once made, nor can we doubt it would have been made had Thompson's second measurement varied from his first; and if it did not, what is to be thought of the final measurement, which did not materially vary from those imperfect and unreliable preliminary measurements above referred to, and those estimates by workmen which were received in lieu of measurements?

The testimony of the following witnesses establishes the inaccuracy of Thompson's measurements: Skinner, in regard to work executed by himself, (Rep. 253, p. 78, question 18, and p. 79, question 1,) and Gilchrist, a witness produced on several occasions especially to impeach the measurement of the commissioners, (Rep. 253, p. 128,) in regard to work measured by him. This last witness openly expresses the opinion, based upon his own re-examination of Thompson's measurements, "that Mr. Thompson was in the habit of receiving the statements of the workmen as to the quantity of work done." In other words, that Thompson did not measure some of the work at all. The attention of the court is asked to the whole of his deposition. (Rep. 253, p. 122, *et seq.*)

Shepherd, as above stated, has been already allowed, according to Thompson's measurement, for all work done by sub-contractors, and paid for by Shepherd on Thompson's measurements. This work seems to include some of the remarkable impositions pointed out by the committee in report 253, but there is no room to doubt, from the disclosures in the testimony above referred to, that if this claim be allowed, other errors not less gross will be admitted as charges upon the treasury.

The second item does not arise under this contract, and will be treated of further on.

The third item is for a wing-wall and culvert near Shepherd's house. It is admitted by petitioner (statement Rep. 253, p. 182) that this work was not measured by Thompson, and the testimony cited in the brief shows that it was not measured by the commissioners; nor was it measured by the persons "who completed the measurement of walls left unfinished by Thompson," for that was allowed by the commissioners and paid for. (Gilchrist, Rep. 253, p. 125–6.) Nor was this item mentioned by the committee who reported the liberal basis on which Shepherd's accounts were settled in 1825. And why? Because the work was not within the limits of the road, (p. 126,) and because, further, *it was not executed under and according to Thompson's directions*—that is to say, it is not at all within the contract. The first paragraph in Thompson's testimony (Rep. 253, p. 51) places this beyond doubt. A comparison of the terms in which the wall is described by Gilchrist, (p. 126,) Caldwell, (174,) and the petitioner, (p. 182,) identify it as the south wing-wall on the east side of the bridge, near Shepherd's house, repudiated by Thompson himself, (at p. 51.) Hence it was never measured by any authorized person, and the claim for it rests upon a measurement made, so far as is shown, by Shepherd's direction only.

The fourth item is for a side-wall built and removed—charged at $485 50.

The testimony cited in support of this item shows that the work was built and removed in Thompson's time. Thompson had measured it, and gives the exact dimensions in his testimony, (Rep. 253, p. 130,) stating it to amount to $130. Neither he nor any other witness says it was not paid for; nor is any explanation offered to show why it may not have been paid for. With the same propriety the claimant might put in his account here for any culvert or abutment in the whole range of this contract, and require the government to prove it was paid for. There has been a settlement of the accounts between the petitioner's intestate and the United States, embracing all work under this contract; and if she seeks payment of any item chargeable under that contract, it is for her to show that it was omitted in that settlement. Several cases of work done and abandoned appeared in Thompson's books, and the commissioners in such cases made a fair allowance. (Rep. 253, p. 39.) Besides the presumption of payment arising upon that settlement, we show that it was actually measured. If it was not actually entered and paid for as a distinct item, it was no doubt allowed for, as in the case of the bridge near Carter's house. (Thompson, p. 130.) In that case "some alteration was made in the location of the bridge," and "an allowance was made Colonel Shepherd in the measurement;" and see allegation by petitioner, (Doc. 202, p. 35,) that it was agreed in that case that compensation for the change ordered should be made by admitting an increased quantity of work in the measurement. If such was the mode of doing business, unquestionably some way, if not that suggested, was found to make good the loss. But it is proper to say, that if the particular mode suggested was adopted, and if Thompson, for this purpose, overstated the measurement of some work not done by a sub-contractor, the commissioners' remeasurement has cut off the excess.

All this, however, is conjecture. It is for the petitioner to show that the work has not been paid for

The fifth item is a claim for the sum of $961, charged against Shepherd, on the report of the commissioners, as an amount necessary to repair a bridge, which, on account of defective workmanship, was giving way.

The commissioners rejected much work on account of defective workmanship, and the whole of it was afterwards paid for, on the report of the committee in 1828. This item, though not in the form of work rejected, was the same in substance, and was clearly within the description of claims to be allowed; and if it was not included in the statement of the Secretary of the Treasury, at p. 156, (and I can neither identify it nor be sure of its absence,) I can see no reason for rejecting it. Thompson, in his testimony cited by petitioner's counsel, and besides, at p. 130, proves that the work was done according to his directions and approved by him.

In regard to this and the preceding items—that is, the 3d, 4th, and 5th items—it is submitted that the allegations of the petitioner bring them within that class of charges which were embraced in the refer-

ence to the Secretary of the Treasury, and allowed in the account settled at the treasury in 1825, and that it is for the petitioner to show clearly that they were by mistake omitted in that settlement.

The sixth item is for money to H. Smith for extra work, $30.

The circumstances of this case are simply these: Stewart, as subcontractor, undertook to build a bridge over Good's run, but absconded without completing it. (Rep. 253, p. 62.) Smith was employed by Shepherd to do some of the work in completing it. (Id., 177.) In building bridges, Shepherd was bound by the contract to provide for "the free entrance and passage of the water." (Id., p. 9.) This had not been properly done, and Thompson required Smith, who was finishing the bridge, to make the water-way deeper. (Id., p. 177.) It was done, and Shepherd paid Smith. There is no allegation that the bridge had been accepted before this work was done. If it had been received from the contractor, it is obvious that Smith would not have been paid by the contractor. The fact that he was paid by Shepherd is conclusive that the bridge had not been approved and accepted by Thompson, but was still at Shepherd's risk.

The seventh item is for coping various side walls to bridges, $3,586 50.

This item is put forward with singular hardihood, as a charge for work "not required by contract." By the contract, after covenanting to build all bridges, &c., Shepherd agrees "to cope and point such walls as may require it; to procure materials of an approved quality; and, in short, to do everything necessary for the proper and permanent construction of the said bridges, in such manner and form as the said superintendent may direct and approve." (Rep. 253, p. 9.)

In treating of this item, it seems to be assumed by the petitioner that after the contract was made, Thompson received instructions from the Secretary of the Treasury to require a different kind of coping from the contractor.

Now, the only requirements made by the superintendent of the contractor were two. The first was by note, dated May 26, 1817, three months before the receipt of the treasury instructions. (Rep. 253, p. 165, No. 1.) This was a friendly note to Shepherd, advising him that his quarrymen were wasting stone that would do for coping. In it Thompson states the dimensions of the coping required, and says the work must be done as well as that on the eastern division of the road already finished. Here is no change from the description of the contract. It was clearly within the competency of Thompson to determine the dimensions of the coping, and that he required nothing unreasonable is manifest from two facts on the face of the note. 1st, the coping stone were such as the "quarriers break up for common purposes;" and 2d, it was to be as good as that already put up on another part of the road.

The next requirement of the superintendent was dated on the 24th of August, 1817. (Rep. 253, p. 165, No. 2.) In this note he says he has "received directions from the Secretary of the Treasury to have all the walls coped with heavy stone and well clamped to prevent them from injury by evil-disposed persons." "You will, therefore,"

he tells Shepherd, "have all your walls covered with the heaviest stone that can be procured; but in lieu of clamping you will have them dowelled with locust pins of an inch in diameter, or with iron dowels; and where it is not convenient to get heavy stone, you will put in two dowels of iron; three-fourths of an inch will be large enough."

Recur for a moment to the contract. By it Shepherd binds himself to cope the walls with materials of approved quality, and do everything necessary for their proper and permanent construction—they being part of the bridges—in such manner as the superintendent should direct. Did the superintendent require anything more than he was authorized to require under this agreement? Shepherd undertakes to cope the walls with approved materials. Thompson tells him to get the heaviest stone he can. Shepherd agrees to do everything necessary to its permanency as the superintendent may direct. Thompson thereupon tells him to dowel the coping. Is it alleged that Thompson required anything not necessary to the proper and permanent construction of these walls? That "heavy stone, or the heaviest stone he could procure," was better material than he agreed to furnish; or that dowelling was unnecessary? Not at all; no such allegation is made. And if it were made, it would be, if not contradicted by the evidence, certainly very far from being sustained by it.

The items which make up the amount of this portion of the claim are eight, of which seven are mentioned by Gilchrist, who measured the work, in his deposition. (Rep. 253, p. 127.)

In reference to the quality of the work, this witness says at the place cited, in substance, that he saw that some of the coping was dowelled with locust pins, and presumes it was all dowelled; that the stone, or the greater part thereof, used in the Deep Hollow bridge are not of good quality, but are [in 1827] crumbling; that he believes the rest of the coping to be good, but has not examined it. This is all he says in this place on the subject; the rest of the coping he speaks of here forms no part of the present claim. On pp. 128, 129 he speaks of the value of the coping: none of it was worth more than $1 per foot, except that on the bridge opposite Mrs. Gooding's, which was worth $2, and that might have been made just as substantial as the rest for the same price. Now the rest were satisfactory to the superintendent, and there is no evidence that he required this bridge to be better than the rest. Gilchrist's testimony then amounts to this: That the superintendent's requirements were satisfied by coping worth $1 per foot; that none of it was worth more, except one piece, which could have been made as good for that price; that one other piece had given away when he saw it, and that he had not seen the rest lately. This value, however, is stated under a condition: that Shepherd was apprised, when he commenced the work, that it was to be so furnished. Well, Shepherd was so apprised; both Thompson's notes to him are dated within a few months of the date of the contract, and two years before much of the work was finished; the coping of course was the last thing to be done. Thompson's testimony is to the effect that the coping of Deep Hollow bridge was bad. The rest of his testimony refers to coping of bridges not embraced in this claim, except as to one

item, the coping of the bridge over Mr. Shepherd's own mill-race, which Gilchrist did not measure, and says nothing about, but which Thompson says was done in a style which he did not require. Any one who reads the testimony will see that Shepherd was a man of some private ambition, as well as much public spirit, and will readily perceive why the bridge over his own mill-race was built in a superior style.

Thompson, then, proves only that one of the pieces of work was bad, and that another was better than he required; as to the six other items he is silent. Gilchrist proves precisely the same things, with the addition that the work was worth $1 per foot. Here is all the evidence cited by the petitioner, and I have been able to discover very little more, though that little throws some light on the subject. In the deposition of Jacob Atkinson, who was Shepherd's clerk and bookkeeper, (Rep. 253, p. 61,) he says Shepherd paid his sub-contractor for the parapet *and coping* at the Double Hollow bridge, at $2 50 per perch. There the coping was measured and paid for by Shepherd to his sub-contractor, as part of the masonry, and at masonry prices, and so unquestionably it was measured by Thompson, and paid for by the government.

Again, at page 63, the same witness says that Currin was paid $1 per foot for the coping of the bridge in front of Mrs. Gooding's, he quarrying the stone and laying it, and Shepherd doing the hauling. This looks as if the coping was an expensive thing, and it may be proper to notice that this coping is that which Gilchrist says could have been made quite as substantial at half its cost. If this be so, the coping for which Shepherd charges $2 would cost him fifty cents, besides hauling the stone, after it was quarried, and furnishing sand and lime to lay it. At the rate paid at Double Hollow bridge, it would not, perhaps, have cost quite so much.

It is, however, in our view of the question, quite immaterial what Shepherd paid for the coping, or what the coping was worth, provided it was not, as we contend it was not, beyond the requirements of the contract. But if the court should attach any weight to the testimony, showing that the coping, for which the government paid but masonry prices, $3 50 per perch, was in fact worth $1 per foot, then the court are requested also to take into consideration the fact stated by Atkinson, (Rep. 253, p. 60 *et seq.*,) that much, if not most of the masonry, for which Shepherd received $3 50 per perch, was done by sub-contractors for $2 50 and less per perch. It seems, however, too obvious for argument that it does not help the petitioner's case to show that any given part of his work is worth more than the average rate paid for the whole, and yet testimony to this effect is all that he relies on. No witness that he cites, and none that I can find, says the work was better than was required by contract.

I now proceed to notice a point that must have attracted the attention of the court. It is this: That while the only witness called for the petitioner to prove the amount and value of the coping fixes it at $1 per foot, the petitioner charges $2 per foot, and for so doing cites no better ground than that John McLure, and others, for some coping done by them, were paid $2 per foot, which is said to be "the gov-

ernment price." (Doc. 202, p. 42.) This, I suspect, is the key to this singular claim; and the facts in relation to these charges for coping, if investigated, would prove to be as follows: John McLure was one of the earliest who petitioned Congress for payment according to Thompson's measurements, and an act for his relief passed at the same time with that for Shepherd's. It did not, however, prescribe the amount, but referred the settlement to the treasury. Thus his claim came before the new administration which went into power on the 4th of March, 1825; and the new Secretary proved to be more liberal than his predecessor, who had adjusted Shepherd's account in advance of the act for his relief. It so happened, moreover, that there were two circumstances in McLure's favor: First, there was in his contract no provision for coping, so that he could with good conscience claim for it as extra work, and the Secretary allowed it. Secondly, he had been paid in full for mason-work according to Thompson's measurement, and it may readily be supposed that the Secretary might be willing to credit him with an item which had already been paid for when he would not have made the payment if the thing had been *res integra*. His case bore more analogy to that of Shepherd's sub-contractors than to that of Shepherd himself. So McLure was allowed the amount of the difference which stood against him on the books of the treasury, and was paid for coping at the rate he charged. McLure, as stated in the Auditor's report on his claim, was the first who was paid for coping, and upon this precedent sundry other persons have been paid at the treasury for coping, probably including some who, like Shepherd, were bound to cope their walls, and who, like him, had already been paid for as a part of their masonry. Shepherd never claimed for coping until after McLure had been paid for his; and I venture to say, but for the success of McLure, never would have made such a claim. He now cites McLure's case not only as a precedent for paying for coping, but as a precedent for the allowance of $2 per foot for it, while his own best witness swears it was worth but $1.

Although I cannot believe that the court will sustain this item of claim, or hold that the coping done was beyond the requirements of the contract, yet I must suggest one other difficulty in the way of its allowance.

Several of the bridges on which this coping was done were built and coped by sub-contractors. (Atkinson, Rep. 253, pp. 60, *et seq.*) Shepherd paid these men, on Thompson's measurement, for more work than the commissioners were willing to credit to Shepherd; but in the settlement made in 1825 Shepherd was allowed credit for the full amount overpaid the contractors. There is no intimation, anywhere in the evidence, that I have seen, that these sub-contractors had any claim upon Shepherd beyond the amount due them according to Thompson's measurements. This has been satisfied in full by the United States; and the question is, whether, in those payments, the coping has not already been included. Thus, Shepherd claims for coping the bridge over Wood's run, (466 feet, at $2,) $932. The government has already paid Shepherd (Doc. 202, p. 46) $1,499 78,

more than the bridge amounted to, on his allegation that he had paid his sub-contractor for so much work. If this payment to the sub-contractor by Shepherd included the coping, of which there can be no doubt, then the government, in reimbursing Shepherd, has paid for the coping. The same is the case with Deep Hollow bridge and the bridge opposite Gooding's. I think it clear that Shepherd can receive no more from government, on account of any one of these bridges, until he proves that the work, including coping, amounts to more than the government has already paid him for it.

The last item which I shall notice is the second in the petition; but as it has no connexion with the contract under which all the others arose, I have reserved it until they were disposed of together.

Shepherd was a contractor for making a portion of the national road. He desired to change the location of the road, in passing through his own property, with a view to his own interest, and, as the length of the road would be increased, he, in some form, which is not shown, but which is admitted by petitioner, agreed to make the increased distance at his own expense. The location was accordingly changed in 1819, (Rep. 253, p. 48,) but when the road was finished, either Shepherd or his sub-contractor was paid for the whole distance, no notice appearing to have been taken of Shepherd's agreement. When the commissioners went out, in 1820, they measured the two routes, and reported that the one adopted at Shepherd's solicitation was 53 poles longer than the original, costing $1,490 62 more, and the amount was charged against Shepherd on his masonry account, which was still open. In 1824 Shepherd employed a measurer to ascertain the increased distance, and he reported it at 38½ poles only, whereupon the petitioner claims the difference, 14½ poles, worth $406, as erroneously charged.

The difference arises in part, if not entirely, from the fact that the commissioners measured one line as the original route, and Shepherd measured another and a different line. The commissioners followed a location made in the year 1807; Shepherd followed a location which he contended had been made by Colonel Williams about the year 1816 or 1817, passing by a noted hackberry tree. The commissioners, in their report to the Secretary of the Treasury, (Rep. 253, p. 47,) state as a fact that Colonel Williams had no authority to make any change at this point from the location of 1807, and that there is no vestige of evidence that he ever obtained the approval of the President to the hackberry route, as it was called. They therefore took the difference between the route of 1806 and that of 1819, and reported the difference to the treasury, with a plat of the locality. The treasury unquestionably had plats of the road and of all changes made by Williams, and must have known at once which of the routes was the one established when the deviation was proposed. As this has entered as an item into the account stated by the treasury, under the resolution of 1824, and adopted by the act of 1825, it is submitted that it rests upon the petition to prove error by establishing the location of Williams in 1816, and this the testimony cited utterly fails to do.

The 8th and 9th items, for costs and interest, are submitted without argument, the former not being founded in any principle of law, and the latter denied by early decisions of this court.

JNO. D. McPHERSON,
Deputy Solicitor Court of Claims.

IN THE COURT OF CLAIMS.

November 19, 1860.

LYDIA CRUGER, EXECUTRIX OF MOSES SHEPHERD, *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the court.

On the 17th of February, 1817, the late Moses Shepherd contracted with the United States for the performance of mason-work, &c., on a section of the Cumberland road, and this claim is made by his executrix for a balance of account due on the contract which is set forth in Exhibit 1. The claim has been long in controversy. It was the misfortune of the decedent that allegations of fraud and collusion with the superintendent of the road and other agents of the United States were made against him, and his accounts and claims subjected to suspicion and investigation, by which their settlement was delayed in the first instance, and has been prevented since. It is admitted now by the deputy solicitor of the United States that these allegations are not established. They have been repudiated repeatedly by reports of committees and the action of Congress, and they certainly are not sustained by the evidence before this court. The deputy solicitor states in his brief that "he is not convinced and does not believe that any such collusion existed," and thus the examination here is relieved of the prejudices which have embarrassed it elsewhere.

The contract between the decedent and the United States was made on the part of the latter by Eli Williams. His authority for the purpose is not disputed. Under instructions, dated May 5, 1817, Josiah Thompson was appointed superintendent of the construction of that part of the road on which Mr. Shepherd's contract was to be executed. The work proceeded under Mr. Thompson's supervision until it was nearly, and in substance altogether, completed, (Doc. 202 M., p. 58, Hawkins's certificate,) and in its progress payments were made upon Mr. Thompson's acceptance and admeasurements of the work done. Upon the 5th of October, 1819, Mr. Thompson was removed upon the allegation of fraud and collusion before referred to, and Mr. Shreeve, a superintendent on another section of the road, was charged with the duties that Mr. Thompson left unperformed. A commission was appointed by the Secretary of the Treasury to remeasure the work done, and certified by Thompson, and to take evidence in relation to the allegations made. The report of this commission makes a part of Doc. No. 253. It sustained the allegations made of fraud and collusion, and has formed the evidence on which the claims of the decedent have

been disputed and denied payment. It appears to be on the face of it an argument for, rather than a report of, the investigation of charges and allegations; and when its statements and admeasurements can be collated with other testimony, it is so far discredited as to justify the declaration of the committee of the House of Representatives in 1825, that "it is not much to be relied on." The same remark is applicable for the same reasons to the report of Mr. Collier, who, on the 11th of January, 1827, was directed by the Secretary of the Treasury to take testimony in the case, and whose report is also a part of document 253. The apparent purpose of these two reports is to sustain the allegations of fraud and collusion that are now abandoned.

The Secretary of the Treasury adopted the report of the commissioners he had appointed, and settled the account of the decedent according to their admeasurements. The decedent then petitioned Congress for relief, averring that the settlement was erroneous and unjust. The petition was referred and reported on, and in conformity with the report an act of Congress was passed (No. 253, p. 156) directing the Secretary of the Treasury to state the decedent's account upon the principles adopted by the committee, "and if he should, from the facts and evidence known to him applicable to the rights of the parties, differ in opinion with the committee in part or in whole, then in that event also to state the account as to him shall appear right in equity and justice, the contract considered, and that he transmit the same to the next session of Congress, &c., with all the evidence and documents in his possession that he may deem necessary to a fair and full investigation of the claim of the petitioner." The Secretary ordered Mr. Collier to take testimony as before stated, and stated the account of the decedent, and reported it to Congress. and by act of Congress approved March 3, 1825, the amount reported by the Secretary of the Treasury was paid to the decedent.

The decedent again petitioned Congress, averring that the settlement made was erroneous, and from that time (1828) the claim has been the subject of legislative action, as by the exhibits annexed appears, Nos. 2, 3, 4, and 5, until it was referred to this court in 1855.

The claim now made here is for items presented, but rejected in the adjustments of Mr. Shepherd's accounts, heretofore made as above stated. (House Doc. No. 253, pp. 156 to 160, inclusive.)

The claim of the petitioner is set forth in items in his petition as follows:

1. For difference of measurement between superintendent and commissioners, 8,715 perches, at $3 25	$28,323 75
Less amount heretofore paid	7,640 41
Balance due	20,683 34

The commissioner reported that the admeasurements of Mr. Thompson exceeded the actual admeasurements of the work done by the difference above stated. Of this amount $7,640 41 had been allowed to Mr. Shepherd in the settlement, because he had paid it to the subcontractors on Mr. Thompson's admeasurements. (Doc. 253, p. 156.)

The question raised by this item is the absolute accuracy of the admeasurements of Mr. Thompson, the superintendent, and of the commissioners; and this the evidence in the case furnishes no means of determining, for it furnishes no means of determining the actual admeasurement of the work. Of that no plans or drafts are produced, and none can be now made, for a large and the most important part of the work in reference to the issue is under ground or masked by other masonry; and in the report of the commissioners, surveys and specifications and documents are referred to which are not produced, and blanks are left, so that what was intended to be denoted cannot be surmised. Thus the report on its first page exhibits these sentences, (253, p. 11:) "The statements marked A and B will show in detail and result the amount of mason-work, bridges, and dry walls done by Colonel Shepherd," but statements A and B are not produced. "C and D will show the difference of each description of work between our measurement and that of Mr. Thompson, the late superintendent. By the former it will appear that the whole amount of his claim for mason-work done by the perch is, vide amounts A and B, —— perches, and by the latter that the deficiency of admeasurement is (vide accounts C and D) —— perches. Statement — shows the bridges and walls which had been measured by Mr. Thompson, and those bridges or walls which he had seen measured, and it results that the deficiency upon all the admeasurements made by him is equal to thirty per cent. Statement E shows the extent of his claim for the four special contract bridges, together with such explanations as have occurred to us to be just and necessary;" but statement E is not produced. "—— exhibits the amount of his claims on account of the road, and — their claims which were embraced in Thompson's measure omitted in ours, but for which we recommend an equitable and reasonable allowance." Similar blanks occur in other parts of the commissioners' report. C and D are the only statements now exhibited, and the only means of judging of their accuracy is the conflicting depositions of witnesses of whose comparative reliability there is no test.

But, in reference to the comparative accuracy of the admeasurements of the commissioners and the superintendent, there are general considerations and facts that are safer guides than the conflicting statements of deponents. Mr. Thompson measured the work as it was progressing, and with a knowledge of it from the beginning and a daily supervision of its progress. The commissioners measured it after it was done, and buried from sight and touch in its most important parts. Then they used means necessarily uncertain, and by which in many cases accuracy was unattainable. Thus, p. 124, Gilchrist describes the means used; he says: "The mode adopted by the commissioners was to dig a few feet down, and then drive an iron bar down on the insides of the wall until it reached an offset or was stopped by some other obstruction. This I consider as but guesswork, always going to lessen but never to increase the measurement." That this was the mode of procedure by the commissioners is clearly shown by the testimony, and its inferiority to the means that Thompson possessed is manifest; and when witnesses are admitted to be

equally honest their comparative means of knowledge is the test of the comparative value of their testimony.

And in some cases where the admeasurements of the commissioners were remeasured, their first admeasurements were found erroneous, (pp. 124, 125, 174, 173, 157, and 168;) and their report states they omitted to measure some of the work ordered by Thompson and done by Shepherd. (No. 253, p. 33.) And the fact appears that, after the report of the commissioners was made, that their admeasurements were not used; and that Thompson's admeasurements were used in the settlements made with other contractors on the same road. (Doc. 202, H. C. O.)

The petitioners claim that the admeasurements of Thompson are conclusive between the parties to the contract, because by that he is made umpire of that matter between them. The deputy solicitor claims that the admeasurements of Thompson are not conclusive, because admeasurements are not a matter of skill, but of mathematical demonstration. But the admeasurement of different kinds of work, as masonry, painting, &c., is subject to rules which make an art and profession; and in the application of these rules there is a difference of skill in different men, which makes a difference in their results; and, therefore, in contracts for such work quantity as well as quality is made a matter of umpirage.

The instructions of the United States to Mr. Thompson (Doc. 253, p. 164) state: "The execution of the contracts above mentioned, with the several contractors, is left entirely to your supervision;" and by this Mr. Thompson was made the agent of the United States for each particular "in the execution of the contract." Then the contract provides that the work should be done "in such manner as the said superintendent may direct or approve." "No mason-work to be paid for except such as shall be approved by the superintendent aforesaid," and in the progress of the work payments were made habitually and as the regular mode of proceeding upon Thompson's admeasurements. The least effect that can be given to these instructions, provisions, and acts, is that Mr. Thompson was the agent of the United States, whose business and duty it was to make the admeasurements. These, therefore, are *prima facie* evidence under the contract between the parties to it; and if the United States seek to impeach them, the burden of proof is on the United States, and the petitioner must prevail, except so far as the United States *disproves* the accuracy of Thompson's admeasurements.

In the report of the commissioners it is alleged that the admeasurements of the bridge "in front of Mrs. Gooding's house," made by Thompson, was twice its actual admeasurements. But the evidence shows that this was not a mistake in admeasurement, but in computation merely, made by repeating or counting twice an item of admeasurement, and this appeared on the return of the admeasurements made by Thompson, (Doc. 253, 129.) This arithmetical mistake was admitted by the petitioner in her memorial to Congress, and by her counsel in the hearing before this court. But it does not appear from the account settled with the decedent (253, p. 156) that this mistake was then, or has ever been, corrected, and therefore it does appear on the evi-

dence that it is included in the 8,715 perches for which he claims payment, and should be deducted from them. The difference between Thompson's measurement and that of the commissioners, as stated in statement D, is 617 perches, 7 feet, 9 inches.

J. Gilchrist (p. 124) says, that "since that time (the admeasurement of the commissioners) I have examined the measurement made by Thompson, and I am satisfied there was more work done than was allowed by the commissioners," but this evidence gives no quantity, and is therefore inefficient to reduce this particular difference.

An error in Thompson's admeasurement is claimed in the bridge west of Carter's of (450) four hundred and fifty perches; but it appears (Gilchrist, 253, p. 167) that the commissioners refused to measure "an offset," on the ground that it was useless; and it also appears from their statement (p. 25) that they did not measure "foundations" laid and abandoned by directions of Thompson in constructing the work. If the work was directed by Thompson, Shepherd, by his contract, was bound to construct it; and as the contents of the "offset" and "foundations" are not given, there is no proof that Thompson's admeasurements were incorrect in this item.

The next item specified as error is the bridge over Wood's run; this was measured and allowed for in the mason-work by Thompson, "at the same price of stone-work," $202 34. The commissioners say: "In sinking for the foundation of the walls we soon came, in the case of the pier at the south end, within a few inches of the surface, to logs." It was then ascertained that the true height of this wall to the spring of the arch was only —— feet ——, and of the west about —— feet ——. The explanation given by Church, the sub-contractor, was that the logs were put in by the direction of Thompson, and with the knowledge of Colonels Shepherd and Wood, as they then were, and that he was to be allowed for the logs. What allowance had been made he knew not, unless *it had been* in the measure.

Mr. Thompson said in his answer, in his deposition, (No. 253, p. 134,) "I did not measure the foundation of that bridge until after the bridge was finished. There was a fraud practiced by the workmen in building that foundation. I required a frame-work of wood to be sunk ten feet. After the earth was removed for the purpose of sinking the frame, it was, as deponent believes, filled up by the workmen in the night; and it has since been ascertained that the top of the frame was not more than four feet below the surface. Deponent has reference for the foundation for the pier. Colonel Shepherd was allowed for this foundation as mason-work."

It is claimed by the petitioner that the mode of construction was expedient, as the evidence shows (No. 202, p. —) that the part of the bridge on the wooden frame had remained entire, while the other part, on a gravelly foundation, ("there was no rock found there,") had given way.

But the petitioner has no just claim to be paid for wood-work the contract price for stone-work; and he does not show what the wood-work was worth, and therefore cannot be allowed for it. The inaccuracy of Thompson's admeasurement in this item is proved, and the difference between his admeasurement and the commissioners', as

shown in statement D, is 631 perches, 12 feet, 8 inches, equal to about $2,050 75.

Thus the errors established in the admeasurements are, in—

1. Bridge in front of Gooding's house, 617 perches, 7 feet, 9 inches, at $3 25	$2,005 75
2. Bridge over Wood's run, 631 perches, 12 feet, 8 inches, at $3 25	2,050 75
	4,056 50

Item 2. For excess deducted for increased distance between the old and new routes, $406.

The evidence shows (253, pp. 131, 48) that the location of a road was changed by consent of the government, (253, pp. 48, 136,) and it is admitted that Colonel Shepherd was to pay for the increased distance. The commissioners made the increase of distance 53 poles, costing, at contract price, $1,490 62, and that amount was charged to Colonel Shepherd in the settlement made with him. But the evidence (pp. 126, 168, 173) shows that subsequent admeasurement made the difference in distance 38½ poles, and that Shepherd was overcharged 14½ poles, or the amount claimed ($406.) It appears from the commissioners' report that they "*assumed*" *the old location of the road*, and it is asserted by the petitioner that they mistook it. The balance of the testimony is against their admeasurement and in favor of the claim of the petitioner. It was claimed by the solicitor that the whole distance had been by oversight originally paid for to Mr. Shepherd or the sub-contractor, but the evidence does not show it or anything beyond the $1,490 62½ charged to Colonel Shepherd as stated.

Item 3. Wing-wall and culverts near Shepherd's house, $378.

Of this wall no admeasurement is given as made by any one but decedent. Thompson did not measure it, (H. D. No. 253, p. 182,) and he says it was not executed under his directions, and was unnecessary. There is no evidence, therefore, on which this item of claim can be allowed.

Item 4. Side-wall built and removed by superintendent's order, $485 50.

Mr. Thompson testifies that he directed the wall to be built and to be discontinued, but he says it contained "forty perches, and, at $3 25 per perch, amounts to $130" Other witnesses (253, pp. 173, 171) make its contents more, but they speak from estimation only, and, so far as appears, not from admeasurement. On this evidence the petitioner can claim no more than Thompson gives, viz: $130.

It appears from the statements of witnesses (253, pp. 171, 173) that a quantity of stone and cost of digging, &c., were lost to Col. Shepherd, but no evidence is furnished of the value which can be relied upon; and Mr. Thompson says of the stone: "Deponent has no knowledge

of any of these stone being used for the United States; deponent does not certainly know that any of these stones were afterwards used by Colonel Shepherd, but his impression is that they were.

Item 5. Amount retained for the repairs of Broken-back bridge, $961.

This bridge was built under Mr. Thompson's directions and according to them, (253, p. 130;) and the evidence shows that it "is bulged at the side-walls above the arch, (253, p. 134,) and Mr. Thompson then says, I do not think it was owing to any defect in the workmanship or materials. The bulge is in consequence of the filling being too heavy for the thickness of the walls." Other witnesses state (pp. 171, 172) that the materials and workmanship were good; and, moreover, that Thompson directed as to the thickness of the wall, and that Colonel Shepherd remonstrated against it on account of the depth of the filling, and represented the danger of what afterwards occurred from the thinness of the wall. It was the duty of Colonel Shepherd to build the wall as Mr. Thompson directed, and the charge of $961 against Colonel Shepherd in the settlement was erroneous, and he is entitled to be credited with it.

It is urged by the solicitor that it does not appear that this item (and the 3d and 4th) was not paid in the settlement made with the decedent. By the general rule, he who pays the money he owed is bound to show it; and the account stated (p. 158) shows its deduction thus: "Deduction for repairs necessary on a bridge," $961. (See statement F.)

Item 6. 1,793.3 parapet coping, at $2, $3,586 50.

By the contract Mr. Shepherd was to build the bridges specified, for which a price was stated, and "all other bridges, culverts, and mason-work between the east foot of Wheeling Hill and Alexandria, at $3 25 per perch, and provide all the materials of every kind, and *of the best quality*, at his own expense," "to cope and point such walls as may require it," &c., "in such manner and form as the superintendent may require it."

On May 26, 1817, Mr. Thompson wrote to Colonel Shepherd as follows:

"COLONEL SHEPHERD. Sir: I see at some of your quarries flag stone suitable for coping, which your carriers break up for common purposes. Would it not be better to lay by those stones for that purpose, as all the coping must be made of flag stone, and not less than three inches in thickness. The parapet will be two feet wide, and the coping must project outside at least three inches wide, and completed in as good a manner as those already done on the eastern division of the Cumberland road." By this direction the coping "on all the walls that may require it" was to be "of flag stone, and not less than three inches in thickness, and projecting outside the parapet at least three inches wide." The evidence shows (p. 127, Gilchrist) that "the bridge at Goods', the Double Hollow bridge, the bridge at the foot of Wheeling Hill, and the bridge over the race, are all coped with flag stone from four to six inches thick." But, except the bridge

last specified, none of the bridges charged for in this item are mentioned in the above specification, and the inference would be that the bridges charged for (except that "over the race") were coped with stone only three inches thick.

On August 24, 1817, Mr. Thompson wrote to Mr. Shepherd:

"SIR: I have received directions from the Secretary of the Treasury to have all the walls coped with *heavy stone* and well clamped, to prevent them from injury by evil-disposed persons. You will therefore have all your walls coped with the heaviest stone that can be procured; but in lieu of clamping you will have them dowelled with locust pins of an inch in diameter, or with iron dowels; and where it is not convenient to get heavy stone you will put in two dowels of iron; three-fourths of an inch will be long enough."

It is assumed for the petitioner that, in consequence of this direction, all the bridges charged for were coped with heavier stone than that first directed; but of this there is no evidence in the case, and all the evidence on the matter is that stated above, from which, as stated, the inference would be that the bridge over the race was the only one specified in this item which was coped with stone four inches in thickness; and of this Mr. Thompson says the coping is the cut saddleback coping, done in the best style. In that particular, more work was expended (in reference to the bridge over the race) by the contractor than was required by the department. It is observable, too, that he says, "I do not know what Shepherd claims," and he in no way suggests that the coping of the bridges is a matter for "*extra allowance.*"

By the contract Shepherd was bound to furnish all the materials of the *best quality;* and had Thompson required in his first direction, of May 26, stones of four inches in thickness, certainly such requirement would have been within the contract. That first requirement did not exhaust Thompson's power under the contract, or preclude him from changing it, and requiring stone four inches thick instead of three. There is nothing in the evidence, therefore, that takes the coping out of the contract and its stated price at $3 25 per perch. At that price the coping would be measured as part of the bridges, and paid for as such; and there is no reason shown for making the coping a special charge, or for inferring it was not measured and paid for in the bridges.

Item 7. Extra work paid Smith, $30.

Smith was employed by Colonel Shepherd to finish a bridge on the road, and was directed to take up the paving which had been laid in the water-course of the bridge, and sink the ground two feet lower than it was originally, and pave it again. For this work Shepherd paid Smith thirty dollars. The right of Mr. Shepherd to this item of claim would depend on the fact that the water-way had been originally made as Thompson directed; and of this there is no evidence in the case, p. 177.

Item 8. Costs of suit claimed as damages for breach of contract, $75 82.

The damages claimed are not legally referable to the breach of contract shown.

Item 9. Interest from January, 1820, to January, 1856—36 years		$57,902 58
Interest on $33,674 36 paid in 1825, from the date when due, say five years		10,102 30
		68,001 88

We think the United States are not liable to interest.

On the whole evidence we are of opinion that the petitioner is entitled to receive—

1. For difference of measurements between superintendent and commissioners	$20,683 35	
Less errors shown in the admeasurement of Mr. Thompson	4,056 50	
		$16,626 84
2. For excess deducted for increased distance between old and new routes		406 00
3. Side-wall built and removed by superintendent's order.		130 50
4. Amount retained for repairs of Broken-back bridge...		961 00
		18,124 34

For which sum a bill is ordered to be reported to Congress.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 261.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, vs. THE UNITED STATES.

1. The petition of the claimant, brief and supplemental petition.
2. Extract from proceedings of the accounting officers under act of February 12, 1793.
3. Solicitor's brief, with appendix.
4. Opinion of Judge Scarburgh, adverse to the claim.
5. Opinion of Judge Loring, concurring.
6. Opinion of Judge Hughes, dissenting.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, DECEASED, *vs.* THE UNITED STATES.

Petition, &c.

The petition of Richard S. Coxe, of the city and county of Washington, D. C., the administrator of Anna Gibson, deceased, respectfully showeth:

That his intestate was the widow of Colonel George Gibson, who served under General A. St. Clair in the disastrous campaign against the Indians in the year 1791. In the course of this unfortunate expedition Colonel Gibson, fighting gallantry for his country, received a mortal wound, from the effect of which he shortly after died, leaving your petitioner's intestate his widow and several young children.

Your petitioner further showeth that on the 12th February, 1793, an act of Congress was passed entitled "An act relative to claims against the United States not barred by any statute of limitations, and which have not been already adjusted." (1 Stat., 301.) By this act it was provided that all claims upon the United States, enumerating those of several descriptions, which had not already been barred by any statute of limitations, and "which shall not be presented at the treasury before the first day of May, 1794, shall be forever barred, &c.;" provided, that nothing herein contained shall be construed to effect loan office certificates, &c.

The second section of this act provided "that it shall be the duty of the Auditor of the Treasury to receive all such claims aforesaid as have not been heretofore barred by any act of limitations as shall be presented before the time aforesaid, with the certificates or other documents in support thereof, and to cause a record to be made of the names of the persons and of the time when the said claims are presented; which record shall be made in the presence of the person or persons presenting the same, and shall be the only evidence that the said claims were presented during the time limited by this act. Section 3 enacts that it shall be the duty of the accounting officers of the treasury to make report to Congress upon all such of the said claims as shall not be allowed to be valid according to the usual forms of the treasury.

In conformity with the provisions of this statute, an elaborate report was made on the cases thus required to be presented to the treasury, by R. Harrison, the Auditor, and addressed to O. Wolcott, Comptroller of the Treasury, bearing date January 19, 1795, which was examined, considered, and admitted by the Comptroller January 20, 1795, and certified on the 22d of January, 1795, by Joseph Nourse, Register, as on file in his office. This document, with the certificate of the above-mentioned officers of the department, was transmitted to Congress by the Secretary of the Treasury, under date of the 23d of December, 1795.

The whole will be found at length in Gales and Seaton's edit. of the State Papers, title "*Claims*," pp. 172, &c.

From this document it appears that on the 30th of March, 1794, and consequently within the time limited by said act of Congress, Anna Gibson, your petitioner's intestate, did present, through John Nicholson, at the treasury of the United States, "continental bills of old emission" to the amount of $27,235.

The Auditor, in his detailed report upon these claims, places this particular one in class No. 7, (see above-cited volume, p. 174,) and, in reference to them, observes: "This class is composed of three claims presented by John Nicholson, all of which are founded on bills of credit issued by the government, commonly called bills of the *old emis-*

sion. For these Mr. Nicholson claims payment *at par*—that is, one specie dollar for one dollar in paper. The only provision hitherto made for this species of paper is by the act of Congress of the 4th of August, 1790, entitled 'An act making provision for the debt of the United States.' How far it may comport with justice to make provision *on different* principles for the particular cases now under consideration, is a question proper for the decision of Congress."

The act of Congress of August 4, 1790, thus referred to, (1 Stat., 138,) fully recognized the obligation on the part of the United States to pay the full amount of such certificates of debt, with interest at the rate of six *per centum per annum;* and the preamble is couched in these strong, emphatic, and honorable words: "Whereas justice and the support of public credit require that provision should be made for fulfilling the engagements of the United States in respect to their foreign debt, and for funding their domestic debt upon equitable and satisfactory terms."

It would seem that Congress never acted upon the suggestion made in the report of the Auditor above quoted, and the position of Mrs. Gibson (left a widow with several young children) prevented her from availing herself of the advantageous terms proposed by the government, so that the debt due to her has never been paid either in whole or in part. It is now asked that payment of principal and interest, according to the terms of the original obligation, may now be made to her representatives.

Mrs. Gibson, at her death, left three children—Francis, the eldest, formerly of Perry county, in Pennsylvania, who is now dead; George, now a general in the army of the United States; and John B. Gibson, late chief justice of the Commonwealth of Pennsylvania, now deceased. General Gibson is therefore the sole surviving representative and child of his mother, and, as such, she having died intestate, exclusively entitled to administration upon her estate. At the special instance and request of General Gibson, letters of administration upon the estate of his mother have been granted to your petitioner, who, in that capacity and as the sole legal representative of the said Anna Gibson, now presents this claim before your honorable court.

RICHARD S. COXE, *In pro. per.*
CHARLES NAYLOR,
Of Counsel with Claimant.

DISTRICT OF COLUMBIA, } *ss:*
Washington County, }

Be it remembered that on this thirteenth day of November, in the year 1856, personally appeared before the subscriber, a notary public in and for the county and District aforesaid, duly appointed and qualified, Richard S. Coxe, the claimant in the foregoing petition named, who, being duly sworn according to law, deposes and says that the facts set forth and the averments made in said petition are true, to the best of his knowledge and belief.

In testimony whereof, I have hereunto set my hand and fixed my [L. S.] notarial seal, on the day and year first before written.

B. P. SMITH, *Notary Public.*

IN THE COURT OF CLAIMS.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, DECEASED, *vs.* THE UNITED STATES.

Brief of petitioner.

In the petition originally filed in this case a statement was made presenting the circumstances under which the individual whose name appears on the record as the claimant was personally introduced as the acting party in the case. It was at the special instance and request of General George Gibson, the well-known veteran soldier, now the only surviving issue of his mother, and consequently alone entitled to letters of administration on her estate, that the present claimant asked for and procured such letters upon the estate of the late Anna Gibson. He therefore is acting in a fiduciary character, bound to prosecute all just claims of his intestate, under an equally imperative obligation to account for all his proceedings, responsible to those whose interests have been intrusted to his care for all that may actually come into his hands, and for everything in the shape of property which by the exercise of due diligence he might have received. It is with a due appreciation of this high responsibility, and with the most sincere and full conviction of the justice of the claim, that your petitioner presents himself before this honorable court, asking nothing more than strict law authorizes him to demand, and what the nation's honor is pledged to afford.

Colonel George Gibson was an officer in the army of the United States, serving under General St. Clair, in the disastrous campaign against the Indians in the year 1791. In this unfortunate expedition, which resulted in the defeat of the troops under the command of that meritorious officer, Colonel Gibson received a wound which proved to be mortal. Dying in the discharge of his duty to his country, which he had performed with the utmost gallantry, as recorded in the history of the times, he left your petitioner's intestate a lonely widow with a family of young children—Francis, the eldest child, formerly of Perry county, in Pennsylvania, long since deceased; George Gibson, now by brevet a major general in the army of the United States and commissary general; and John B. Gibson, late chief justice of the Commonwealth of Pennsylvania. It would be a work of supererogation before this court to dilate upon the personal character of the two last named individuals—these worthy sons of a worthy father. The one is identified with the military history of his country, and has won by his services the high rank which he now enjoys. The name of the other illustrates the judicial history of his country, and especially that of his native State, from the highest position on its highest tribunal he so long administered the law.

As has been already intimated, Colonel Gibson at his death left a widow and three young children. They were thrown upon the world, deprived of their natural protector and guardian.

The widow appears to have been the proprietor of a considerable

amount in continental bills of credit issued by the first continental Congress at the inception of our revolutionary struggle. The precise nature and character of these papers will be presently shown. Such is the foundation of the present claim.

Your petitioner had, on the first presentation of his case before this honorable court, very briefly, though as he then hoped with sufficient distinctness by reference to authentic documents and the action of continental and subsequent Congresses, exhibited his case. He is far from regretting that the court required more precision of statement as to facts and dates, and he avails himself of this opportunity to give a more distinct exhibition of the substantial merits of the case. The call is obeyed with pleasure and alacrity, and he trusts that, should he now err in the opposite direction, he shall be excused for going into a full and minute exposition of the case.

It is a matter of history, which it is presumed will require no reference to authority to substantiate, that from the commencement of our revolutionary struggle one of the principal difficulties with which our fathers had to contend was the want of pecuniary means. The mighty resources which have since been developed in such magnificent proportions were then only in an embryo state. The Twelve United Colonies speedily increased to thirteen, which undertook and carried on this seemingly unequal contest, possessed no national revenue, and indeed in every respect little more than a faint shadow of national existence. The several colonies were separate and distinct communities, independent of each other, until an imperfect form of nationality was created by the articles of confederation. The provincial Congress was rather an assemblage of delegates appointed to meet and confer, limited by special instructions from their respective constituencies, than a body vested with legislative or administrative powers. It could only recommend; it could not enact.

It was under such unpropitious circumstances that the war of the revolution was commenced. So far as regards foreign nations, it did assume to act as the representative of the whole, but even within this sphere it could only pledge the faith of the whole body and recommend such measures as were necessary to carry into execution the stipulations into which it had entered. So in reference to some domestic matters. It undertook to raise armies, but possessed in itself no means of defraying the necessary expenses of subsisting them. It borrowed money, but was compelled to rely upon the several colonies to contribute the funds to pay even the accruing interest on its loans. The present claim originated in the exercise of this power in Congress to raise money and procure supplies essential to the prosecution of the contest.

Shortly after the commencement of hostilities, but months anterior to the declaration of independence, it was found necessary to raise the funds necessary to meet the public exigencies. Under these circumstances, on the 22d June, 1775, Congress passed the following resolutions:

1. *Resolved*, That a sum not exceeding two millions of dollars be emitted by the Congress in bills of credit for the defence of America.

2. *Resolved*, That the twelve confederated colonies be pledged for

the redemption of the bills of credit now directed to be emitted. (1 Journ. of Cong., p. 87.)

On the following page of the same volume (p. 88) the next proceeding of that body on the subject—

"*Resolved*, That the form of the bills be as follows:

"CONTINENTAL CURRENCY.

"No ——. This bill entitles the bearer to receive —— Spanish milled dollars, or the value thereof in gold or silver, according to the resolution of the Congress held at Philadelphia on the 10th day of May, 1775."

On the 25th of July, 1775, it was resolved that a further sum, amounting to the value of two millions of Spanish milled dollars, be struck in bills of thirty dollars each. (1 Journ. of Cong., 123.)

On the 17th February, 1776, it was resolved that a further sum of four millions of dollars be emitted on the same security as the sums heretofore emitted by Congress have been. (1 Journ., 267.)

On the 9th May, 1776, it was resolved that five millions of dollars be emitted in bills of credit, in part of the ten millions voted for the service of the current year: That the Thirteen United Colonies be pledged for the redemption of the said five millions of dollars at such periods and in such manner and proportions as Congress shall hereafter direct and appoint. (1 Journ., 338.)

May 12, 1776, a further emission of five millions of dollars was authorized, and the form of the bills of credit prescribed as follows:

—— dollars.

This bill entitless the bearer to receive —— Spanish milled dollars, or the value thereof in gold or silver, according to a resolution of Congress passed at Philadelphia the 9th May, 1776. (1 Journ., 253–4)

Other resolutions, similar in character and nearly identical in language, were adopted by Congress.

On the 4th July of this year the declaration of independence bears date. The emissions of continental bills were anterior to this event. In October, 1776, an important change was made in the mode of raising funds for the prosecution of the war. The United States had now assumed the position of one of the nations—claimed rights and exercised powers as such. Loans were now authorized to meet the augmented demands of the crisis. Provision was made under this new position of affairs as well to redeem the bills of credit previously emitted as to meet further emergencies. On the 3d of that month it was resolved that five millions of continental dollars be immediately borrowed for the use of the United States at the annual interest of four per cent. per annum; that the faith of the United States be pledged to the lenders for the payment of the sums to be borrowed and the interest arising thereon, and that certificates be given to the lenders in the form following, to wit:

"The United States of America acknowledges the receipt of —— dollars from —— ——, which they promise to pay to the said —— ——, or bearer, with interest annually at the rate of five per cent.

per annum, agreeably to a resolution of the United States passed the 3d day of October, 1776. Witness the hand of the treasurer this —— day of ——, A D. ——. Countersigned by the commissioner of the loan office hereafter mentioned."

That, for the convenience of the lenders, a loan office be established in each of the United States, and a commissioner to superintend such office be appointed by the said States respectively. * * * That the said several sums of money to be borrowed shall be repaid at the office where the same was lent, at the expiration of three years, and that the annual interest shall likewise be paid at the same office. (1 Journ., 585)

On the 22d February, 1777, it was resolved that thirteen millions of dollars be borrowed on loan office certificates. (2 Journ., 48.)

On the 26th February, 1777, it was resolved that an interest of six per centum be allowed on all sums of money already borrowed and directed to be borrowed on loan office certificates, although such certificates mention only an interest of four per cent. per annum. (2 Journ., 51.)

These proceedings of Congress contain a renewal of the original obligation exhibited on the face of the bills of credit—a new promise to redeem them with an interest of six per centum per annum.

On the 20th May, 1777, Congress directed a further emission of five millions of dollars in bills of credit, (2 Journ., 135,) and on the 11th April, 1778, a further emission of the same amount, five millions of dollars, and the Thirteen United Colonies were pledged for their redemption. (2 Journ., 509.) On the 1st September, 1779, Congress resolved to limit the amount of bills of credit. (3 Journ., 347.)

During the progress of the war, in consequence of the large amount of issues of bills of credit and loan office certificates, much greater than the wants of the community required for circulation, this paper money began to depreciate in value. This subject having necessarily engaged the serious consideration of Congress, that body, on the 28th June, 1780, passed resolutions in reference to the paper money of the confederacy, and fixed a scale of depreciation commencing with the 1st September, 1777. Among other things it was resolved: That the principal of all loans that have been made to these United States shall finally be discharged by paying the full current value of the bills when loaned, which payment shall be made in Spanish milled dollars, or the current exchange thereof in other money at the time of payment. No depreciation was recognized anterior to the 1st March, 1778, when it was reckoned at $1 75 of bills for one Spanish milled dollar. As no depreciation had occurred, at least of any special importance, prior to that date, the ratio of depreciation could not apply, and was not designed to apply, to any bills of credit previously issued, or what were called bills of the first emission. Such were left wholly unaffected by the consequences of the subsequently increased amount of paper money; and this ground is distinctly presented in the resolve above quoted. (3 Journ., 473.)

The depreciation, owing to the adverse circumstances which occurred from time to time during this eventful struggle, as well as the neces-

sity which called for the issue of immense sums at any sacrifice, progressed with great rapidity. On the 1st of April, 1778, the earliest date assumed by Congress, it was at the rate of $1 75 for one dollar. On the 18th March, 1780, a few days more than two years, it was as forty to one. The issues during this interval were then to be redeemed at the current value of the paper at the time of its emission.

It is hoped that in the foregoing statement there will be found a sufficiently minute and accurate account of the character of our continental currency—the circumstances under which it was issued, the obligations which it imposed, and the rights of the holders of it. It was issued in periods of great peril, doubt, and danger, or in anticipation of such. It was issued to meet a national pressure—a pressure which appealed to every principle of honor and of patriotism, stimulated by every feeling to sustain the cause of liberty; and the brave men who, with Washington, Warren, Putnam, and others as companions and leaders in the tented field, were in absolute want of the necessaries of life. The honor of the States was pledged for the full discharge of the debt incurred. It would be to stigmatize as bastards the descendants of those who gave this pledge to doubt the willingness on their part to perform the contract. They would be unworthy of the noble inheritance which these ancestors have won and bequeathed to us should we disregard the obligations by which this inheritance has been won.

In the minds of those who came forward under the menacing clouds which obscured our early revolutionary history there cannot be discovered even the faintest trace of a mercenary or speculative spirit. Massachusetts was the only point on which assault was made or threatened. Pennsylvania, Virginia, had no immediate interest in the massacre at Boston, in the violent measures adopted by the British government in relation to the destruction of tea. New Jersey, perhaps, had more sympathy of feeling, for although not recorded in the general histories of the time, she had been equally inculpated, and had reason to apprehend similar modes of punishment. The rest of the colonies, to employ an expression of Burke, smelled the approach of tryanny in every tainted breeze. The course pursued in the case of Massachusetts, if successful, would be felt the next day in New York, the next in New Jersey and Pennsylvania, the following day in Virginia or the Carolinas. The noble and generous spirits of that day did not wait for the pressure to be felt personally and immediately upon themselves. They felt the contest to be their own, and at once, without hesitation or reserve, threw themselves as parties into its midst. The continental Congress selected a Virginian as its president and a Virginian to command its army; and the southern colonies acted as energetically and patriotically while the war was carried on at a distance as when it was brought home to their own firesides by Cornwallis and Tarleton—all united in the plan adopted by the issue of bills of credit and in the pledge for their full payment. When the articles of confederation and perpetual union were framed and agreed upon, all concurred in the 12th article, which is couched in this language: "All bills of credit emitted, money borrowed, debts contracted by or under the authority of Congress

before the assembling of the United States in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged." Can there be found one son of these noble patriots so recreant to the obligation thus assumed who will be recreant to the pledge thus made. The promise was made in a period of doubt, perplexity, and danger; shall it be disregarded in the time of strength and prosperity. These articles of confederation and perpetual union are dated in the year 1778—after the first emission of these bills of credit. The period was one which alarmed even the bold. We had to contend with a powerful foe. Intestine division enfeebled us at home. Money, however, was raised and supplies furnished by bold patriots who ventured their means to sustain the contest. Their only security was success in the conflict. They could anticipate no speculative profit. Should the issue prove prosperous, they neither looked nor asked for more than a simple return of what they had perilled; should it be adverse, they must not only expect to be subjected to the same iron yoke which the triumphant oppressor would impose upon the entire community, but be obnoxious to the condign punishment which laws had already provided for the aiders and abettors of treason. The solemn pledges then given were relied on. Confidence was reposed as well in the ability of the country to maintain the struggle, as in the faith and honor of a nation thus rescued from the chains sought to be imposed upon it. The simple question is, was that confidence misplaced? Through it our independence was finally achieved. Through its instrumentality we have become what we are—already one of the great powers of the earth, and, while our Union is perpetuated, cannot but be yearly rising in strength and expanding in influence.

It would be a matter of supererogation on this occasion to furnish evidence to show that at the close of the revolutionary war, when our independence was reluctantly acknowledged even by the foe against whose efforts it had been accomplished, the United States was largely indebted, both abroad and at home, for money advanced and liabilities incurred in this protracted struggle. The amount of this debt, foreign and domestic, was estimated in April, 1784, by a committee of Congress, consisting of Messrs. Madison, Ellsworth, and Hamilton, at upwards of forty-two millions of dollars; of this sum there had remained unpaid at the close of the year 1782, of loan certificates:

For principal reduced to specie value	$11,463,802
Interest unpaid for 1781	190,000
Ditto for 1782	687,828
Amount at close of 1782	12,341,620

(See 4 Journ. of Cong., 197.)

This report shows that Congress had not only been unable to redeem the principal of the public debt due on this account, but that the interest upon it was largely in arrear.

The position of the country for several years subsequently was such

as seriously to aggravate this sad state of things The debt annually accumulated by the non-payment of the accruing interest. Such continued to be the case until, by the adoption of the Constitution of the United States, a new order of things was formed, and, for the first time, we actually became a nation, and a government established clothed with the powers and the functions belonging to a state.

The committee of Congress to which reference has last been made, in enumerating and classifying the various creditors of the government, employ this language in speaking of such of our own citizens who stood in this position: This "class of creditors is composed partly of such of our fellow-citizens as originally lent to the public the use of their funds, or have since manifested most confidence in their country by receiving transfers from the lenders, and partly of those whose property has been either advanced or assumed for the public service. * * * A wise nation will never permit those who relieve the wants of their country, or who rely most on its faith, its firmness, and its resources, when either of them is distrusted, to suffer by the event."—(4 Journ., 196–'7.)

Such was the state of affairs in 1782. In 1784 it was, if possible, still more gloomy. In February of that year a committee of Congress, to whom had been referred several reports and documents concerning the revenue, presented a statement of the results of their investigations. They represent the aggregate amount of the receipts into the public treasury from the 1st of November, 1781, to the 1st January, 1786, a period of a little more than four years. The entire receipts during this period is stated to be $2,457,987\frac{7}{90}$. Within the then last preceding fourteen months embraced in this report, the whole amount of receipts was $432,897\frac{81}{90}$, or at the rate of $371,052 per annum—a sum which, as the committee say, is short of what is essentially necessary for the bare maintenance of the federal government, on the most economical establishment, in a time of profound peace.—(4 Journ., 619–2.)

The government as at present constituted went into operation in 1789. The sixth article of the Constitution, in its initiatory clause, thus speaks: "All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederacy." Thus was incorporated into the organic law of the nation, as a fundamental principle, the obligation on the part of the new government to recognize and faithfully to discharge every debt which had been incurred in the prosecution of the war of independence. The promise originally made, renewed by acts of the old Congress, again pledged by the articles of confederation, was finally solemnly incorporated into the Constitution of the United States. It need not be asked whether any obligation can be more perfect in its origin—more sacredly demanding implicit performance.

The solemn character of this debt and the binding force of these reiterated promises were not speedily forgotten. As early as September, 1789, a few months only after the government had gone into operation, the House of Representatives by resolution called upon the Secretary of the Treasury to report a plan for the public credit. The

report thus called for was made, and bears date January 9, 1790. It may be found at length in the 3d volume of the works of Alexander Hamilton, published in 1851 by order of the Joint Library Committee of Congress. This document exhibits an able argument, demonstrating the soundness of the policy which prescribes a strict adherence to the principles of integrity in administering national concerns as much as in private life.

On the 4th August, 1790, the first act of Congress making provision for the payment of the public debt was passed.—(1 Stat. at Large, 138.) This was followed up by a succession of laws on the same subject, all of which are referred to in a note to the one just quoted, but to which it is not necessary particularly to advert at this stage of the case. On the 12th February, 1793, another act having an important bearing upon the present case was passed, relative to claims upon the United States.—(1 Stat., 300.) The first section of this act is in the nature of a statute of limitation, and requires all claims against the United States, with certain exceptions, for services or supplies, or for other causes, matters, or things furnished or done previous to the fourth day of March, 1789, (the day on which the existing government had gone into operation,) whether founded on certificates or other written documents from public officers or otherwise, which shall not be presented at the treasury before the first day of May, one thousand seven hundred and ninety-four, shall be barred. The second section makes it the duty of the Auditor of the Treasury to receive all such claims, not barred by any statute of limitations, as shall be presented before the time prescribed, with the certificates or other documents in support thereof, and to cause a record to be made of the names of the persons and of the times when the same were presented, which record shall be made in the presence of the person or persons presenting the same, and shall be the only evidence that the said claims were presented during the time limited by this act.

It will be perceived that the act appears to have been designed, chiefly at least, for the purpose of enabling the government to ascertain the amount of the acknowledged and valid debts and obligations of the nation under the preceding governments. Some classes of claims were specially exempted from this statute of limitations, probably from the circumstance that the public archives would supply the means of ascertaining, at least proximately, the extent of indebtment.

Nor was any appropriation made for the payment of these claims now to be presented.

Another provision in the statute deserves to be noticed. Although no means of liquidation is provided, yet the claimant, when exhibiting his demand, is required to deposit in the treasury the certificates and other vouchers upon which his claim rests, a special record was to be made of the fact that the claim had been presented, with the vouchers, the person or persons producing them, and the date of such presentment. These were, to say the least, rather unusual and stringent provisions.

The 3d section of the law also required of the accounting officers of the treasury a report to Congress upon all such of the said claims as shall not be allowed as valid according to the usual forms of the

treasury. A previous clause had provided authorizing the adjustment and payment of claims which might be established in accordance with the usual forms and restrictions.

In conformity with the provisions of this statute, a report was made on the cases thus designated, by R. Harrison, Auditor of the Treasury, and addressed to O. Wolcott, Comptroller of the Treasury, bearing date January 19, 1785, which was examined, considered, and admitted by the Comptroller January 20, 1795, and certified on the 22d January, 1795, by Joseph Nourse, Register, as on file in his office. This document, with the official certificates of the above-mentioned officers of the department, was transmitted to Congress by the Secretary of the Treasury under date of the 23d December, 1795.

The original record and vouchers accompanying it are believed to have perished in the conflagration of the Treasury Department, as upon inquiry they cannot be found there; but the report from the Secretary still, it is believed, remains among the archives of Congress, and it may be found published in full in Gales & Seaton's State Papers, title "Claims," pp. 172, 183.

From this report it appears that there had been received and registered, according to the requirements of the law, in the Auditor's office, one hundred and twenty-four claims. These were arranged by that officer into fourteen distinct classes. Of these fourteen, twelve absolutely rejected as inadmissible on various grounds—the want of legal authority in the officers or parties whose signatures were attached to the documents exhibited, the spurious character of the papers, and defect of proof, &c.

To this general course of condemnation and consequent rejection, there appear to have been but two exceptions. Class 10, consisting of but a single item, was presented by Jacob Hollingsworth, was for the value of a quartermaster's certificate, stated to have been lost by him. The ground of the rejection of this claim, as stated by the Auditor, was, that "no provision has been made by law for the payment of lost or even destroyed certificates." It is believed that some provisions have since been made for cases in which original documents have been accidentally destroyed or lost.

The only other class of cases in which the disallowance by the Auditor was upon grounds in no degree affecting the validity of the claims was class 7, (Jn., p. 174.) It is thus stated: "This class is of three claims presented by John Nicholson, all of which are founded on bills of credit issued by the authority of the late government, commonly called bills of the old emission. For these Mr. Nicholson claims payment at par—that is, one specie dollar for one dollar in paper. The only provision hitherto made for this species of paper is by the act of Congress of 4th of August, 1790, entitled 'An act making provision for the debt of the United States.' How far it may comport with justice to make provision on different principles for the particular cases now under consideration, is a question proper for the consideration of Congress. The money has not been examined or counted."

In the tabular statement appended to this report this case of Anna

Gibson, now represented, No. 131, March 30, 1794, Anna Gibson, continental bills of old emission, $27,235.

It is well known that the bills of credit designated as of the old emission were such as had been issued by Congress long prior to the date of the articles of confederation, and that those bills not only on their face expressed an obligation to redeem them at par in Spanish milled dollars or their equivalent in gold or silver, that they had been repeatedly recognized as entitling the holder to such full payment, as has been fully shown, and that they were in no degree subject to the rates of depreciation subsequently fixed by Congress.

The document above referred to further shows that on the 30th March, 1794, anterior to the date limited by Congress for the presentation of claims, bills of this character, represented as amounting to $27,.35, were duly presented at the treasury in obedience to the requirements of the law, duly registered and received, and a demand made for their redemption in gold and silver at par.

No doubt was intimated as to the validity of the claim. The only question was, what provision Congress might think proper to make for the payment. If the original bills have been destroyed by the conflagration of the Treasury buildings, while they were thus in the lawful custody of the government, it will scarcely be suggested by any one that the interests of the citizen are to be prejudiced by such a casualty. The registry by the Auditor is expressly made the only legal evidence to show when the claim was presented, and by whom, and must necessarily be equally conclusive as to the character of the claim, its ownership, and its amount. The law peremptorily required the documents upon which the claim was founded to be presented to the treasury; the record shows that this was done. The papers must either remain in this place of legal deposit, in which case the United States is called upon to produce them, or the government is bound by the plainest and best recognized principle of law to account for them. If destroyed, the proof can be furnished, it is presumed, of the fact. If the solicitor shall be able to show what has become of the papers, it is incumbent on him to show it. If lost, the best evidence the nature of the case permits becomes competent and admissible. This we think we have furnished.

Your petitioner, wholly unable to conjecture upon what grounds, if any, this claim is to be opposed, submits his case to the consideration of the solicitor and of the honorable court.

RICHARD S. COXE,
Administrator, &c., of Anna Gibson.

RICHARD S. COXE, ADM'R OF ANNA GIBSON, *vs.* UNITED STATES.

The whole case of petitioner, with the evidence, being embodied in the original and supplemental petitions and brief already filed, the case is ready for hearing.

RICHARD S. COXE.

JUNE 13, 1859.

Proceedings of the accounting officers of the treasury on certain claims.

[American State Papers, vol. xix, Claims, pp. 172, 174.]

No. 6365.] TREASURY DEPARTMENT,
Auditor's Office, January 19, 1795.

I certify that, pursuant to an act of Congress passed on the 12th day of February, 1793, entitled "An act relative to claims against the United States not barred by any act of limitation, and which have not been already adjusted," there have been received and registered at this office *one hundred and twenty-four claims*, presented by persons named in the accompanying abstract; which claims, being distributed into fourteen classes, I have examined, and am of opinion that the same are inadmissible at the treasury for the reasons hereafter assigned in treating of each particular class. (P. 172.)

* * * * * * *

CLASS 7. This class is composed of three claims presented by John Nicholson, all of which are founded on bills of credit issued by authority of the late government, commonly called bills of the old emission. For these Mr. Nicholson claims credit at par—that is, one specie dollar for every dollar in paper. The only provision hitherto made for this species of paper is by the act of Congress of the 4th of August, 1790, entitled "An act making provision for the debt of the United States." How far it may comport with justice to make provision on *different* principles for the particular cases now under consideration is a question proper for the decision of Congress. The money has not yet been examined or counted. (P. 174.)

* * * * * * *

SEVENTH CLASS.

Number of each claim, 131.
When presented, March 30, 1794.†
By whom presented, Anna Gibson.
For whom presented, Anna Gibson.
Nature or title of the account or claim, continental bills of old emission.
Apparent in old emission, $27,235.

† These two claims presented by John Nicholson. (P. 179.)

IN THE COURT OF CLAIMS.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for payment of "continental bills of old emission."

MATERIAL FACTS STATED IN THE PETITION.

1. That the intestate owned $27,235 "continental bills of old emission," which she presented to the treasury of the United States on February 12, 1793.

2. That they were presented within the time and in the manner to prevent the statute of 30th March, 1794, from barring the same.

3. That by the law under which these were issued the intestate was entitled to receive, in specie, the full face of said bills, but payment to that extent was refused.

4. That petitioner is now entitled to receive the par amount of said bills, with interest.

5. That petitioner has been the duly appointed administrator of said Anna Gibson.

6. It is not stated when, or under what particular resolution or law the bills in question were issued, nor by whom signed.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

The evidence in this case consists of the proceedings and resolutions of the old and acts of the constitutional Congress, together with a report from the Treasury Department.

1. The journals of the old Congress show that resolves were passed authorizing the issue of bills of credit prior to the 18th of March, 1780, which, after the latter date, were known as the "old emission."

June 22, 1775.—"*Resolved,* That a sum not exceeding two millions of Spanish milled dollars be emitted by Congress in bills of credit for the defence of America."—(1 vol. Old Journals, p. 87.)

The next day a resolution was passed prescribing the denominations of the bills, directing them to be issued for 1, 2, 3, 4, 5, 6, 7, 8, and 20 dollars. It also prescribed the following form:

"CONTINENTAL CURRENCY.

"No. ———. ——— Dollars.

"This bill entitles the bearer to receive ——— Spanish milled dollars, or the value thereof in gold and silver, according to the resolutions of Congress, held at Philadelphia on the 10th of May, 1775."

A committee was appointed to get plates engraved, to provide paper, and to agree with the printers to print the bills.—(1 vol. Old Jour., p. 88.)

Persons were appointed by resolutions of Congress to sign the bills.

On the 21st February, 1776, Congress authorized a further emission of $4,000,000 of the like bills.—(1 vol. O. Jour., p. 270.)

On the 9th of May, 1776, Congress authorized a further emission of $5,000,000.—(1 vol. O. J., p. 338.)

On the 26th of February, 1777, Congress authorized a further emission of $5,000,000.—(2 vol. O. J., p. 52.)

On the 20th of May, 1777, Congress authorized the further emission of $5,000,000.—(2 vol. O. J., p. 135.)

On the 1st of August, 1777, Congress authorized the further emission of $1,000,000, to take up certificates and bills issued by the State of Georgia.—(2 vol. O. J., p. 212.)

On the 22d of January, 1778, Congress authorized the further emission of $2,000,000.—(2 vol. O. J., p. 417.)

On the 16th February, 1778, Congress authorized the further issue of $2,000,000.—(2 vol. O. J., p. 448.)

On the 5th of March, 1778, Congress authorized the further issue of $2,000,000.—(2 vol. O. J., p. 466.)

On the 4th April, 1778, Congress authorized the further issue of $1,000,000.—(2 vol. O. J., p. 499.)

On the 11th of the same month the further sum of $5,000,000.—(2 vol. O. J., p. 509.)

On the 22d May, 1778, Congress authorized the further issue of $5,000,000.—(2 vol. O. J., p. 563.)

On the 20th June, 1778, Congress authorized the further issue of $5,000,000.—(2 vol. O. J., p. 596.)

On the 30th July, 1778, Congress authorized the further issue of $5,000,000.

On the 5th September, 1778, Congress authorized the further issue of $5,000,000.—(3 vol. O. J., p. 47.)

On the 22d September, 1778, Congress authorized the further issue of $10,000,000.—(3 vol. O. J., p. 73.)

On the 4th November, 1778, Congress authorized the further issue of $10,000,000.—(3 vol. O. J., p. 113.)

On the 2d January, 1779, Congress took the following proceedings:

Resolved, That during the continuance of the high prices of the necessaries of life, the salary of the treasurer of loans be increased to 3,500 dollars per annum.

The board of treasury having, pursuant to orders, selected from the journals the resolutions respecting the calling in certain emissions, and providing a fund for sinking the bills of credit emitted by Congress, and prepared a preamble thereto, reported the same; and sundry verbal amendments being made in the resolutions, the whole was agreed to as follows:

Whereas these United States, unprovided with revenues and not heretofore in a condition to raise them, have, in the course of the present war, repeatedly been under the necessity of emitting bills of credit, for the redemption of which the faith of these United States has been solemnly pledged, and the credit of which their honor and safety as well as justice is highly concerned to support and establish; and

whereas, to that end, it is essentially necessary to ascertain the periods of their redemption, and seasonably to establish funds which, in due time, without distressing the people, shall make adequate provision for the same; and whereas, in appointing the payments for the said fund, it is expedient that an extra sum be called for the current year, both on account of the present ease of paying it and to reduce the surplus in circulation: Therefore—

Resolved, That these United States be called on to pay in their respective quotas of $15,000,000 for the year 1779, and of $6,000,000 annually for eighteen years, from and after the year 1779, as a fund for sinking the emissions and loans of these United States to the 31st of December, 1778, inclusive:

That if the continuance and circumstances of the war shall make any further emissions necessary the year ensuing, they shall be sunk in the manner and within the period aforesaid:

That any of the bills emitted by order of Congress prior to the year 1780, and no others, be received in payment of the said quotas:

That the bills received on the said quotas, except those for the year 1779, be applied, first, for the payment of the interest, and, secondly, for the principal of loans made by these United States prior to the year 1780; and that the residue, together with those received on the quotas of the year 1779, be not reissued, but burned and destroyed, as Congress shall direct.

And whereas many counterfeits have appeared in circulation, of various denominations, of the emissions of May 20, 1777, and April 11, 1778, and counterfeits of those emissions have lately been issued by our enemies at New York, and are found to be spreading and increasing fast in various parts of these United States, whereby individuals are defrauded, prices enhanced, and the credit of the paper currency greatly injured; and it is become necessary, for the security of individuals and safety of the public, that those two emissions should cease to be a circulating medium, and should be called in and exchanged or otherwise provided for, as soon as may be, with convenience to the present holders: Therefore—

Resolved, That the following bills be taken out of circulation, namely, the whole emissions of May 20, 1777, and April 11, 1778:

That they be brought in for that purpose, in the manner hereafter provided, by the first day of June next, and not afterwards redeemable:

That they be received for debts and taxes into the continental treasury and into the State treasuries for continental taxes until the first day of June next:

That they be received, until the first day of June next, into the continental loan offices, either on loan or to be exchanged, at the election of the owners, for other bills of like tenor, to be provided for that purpose:

That the bills lodged in the said offices to be so exchanged be there registered, and indented certificates thereof be given to the owners by the respective commissioners of the said offices:

That the commissioners of the loan offices make returns to the treasury board immediately after the first day of June next of the

amount of the bills received in their respective offices to be exchanged as aforesaid, and that proper bills to exchange the same be furnished, and ready to be delivered out at the said offices within sixty days from and after the said first day of June:

That the first-mentioned bills, as they are brought into the treasuries and the loan offices, be immediately crossed and struck through with a circular punch, one inch diameter, to be afterwards examined and burned, as Congress shall direct.

Ordered, That the board of treasury prepare a circular letter to the States, to accompany the foregoing resolutions.

On the 14th January, 1779, Congress passed the following resolve:

"*Resolved*, That the bills to be emitted for exchanging for others, agreeably to the resolutions of the 2d instant, or for supporting the war the ensuing year, be of the following denominations, viz: 65, 60, 55, 50, 45, 40, 35, 30, 20, 8, 7, 5, 4, 3, 2, 1, dollars; that $50,000,000 be emitted for the purposes above mentioned, under the direction of the board of the treasury, in 116,280 bills of credit of each of the denominations aforesaid, which are to be severally numbered from one progressively.

"That the form of the bills be as follows:

"No. ———. ——— dollars.

"The bearer is entitled to receive ——— Spanish milled dollars, or an equal sum in gold and silver, according to the resolution of Congress of the 14th of January, 1779."—(3 vol. O. J., p. 184.)

On the 3d February, 1779, Congress authorized the further issue of $5,000,000.—(3 vol. O. J., p. 195.)

On the 31st of March, 1779, Congress authorized the further issue of $5,000,160.—(3 vol. O. J., p. 242.)

On the 5th May, 1779, Congress authorized the further issue of $10,000,100.—(3 vol. O. J., p. 267.)

On the 4th June, 1779, Congress authorized the issue of the further sum of $10,000,100.—(3 vol. O. J., p. 298.)

On the 17th July, 1779, Congress authorized the further issue of $10,000,100.—(3 vol. O. J., p. 324.)

On the 17th September, 1779, Congress authorized the further issue of $5,000,180 and $10,000,080.—(3 vol. O. J., pp. 362, 365.)

On the 14th October, 1779, Congress authorized the further issue of $5,000,180.—(3 vol. O. J., p. 376.)

On the 17th November, 1779, Congress authorized the further issue of $5,000,040 and $5,050,500.—(3 vol. O. J., p. 395.)

On the 29th November, 1779, Congress authorized the further issue of $10,000,140.—(3 vol. O. J., p. 404.)

On the 18th of March, 1780, Congress took the following proceedings:

SATURDAY, *March* 18, 1780.

These United States having been driven into this just and necessary war at the time when no regular civil governments were established

of sufficient energy to enforce the collection of taxes, or to provide funds for the redemption of such bills of credit as their necessities obliged them to issue, and before the powers of Europe were sufficiently convinced of the justice of their cause, or of the probable event of the controversy, to afford them aid or credit, in consequence of which, their bills increasing in quantity beyond the sum necessary for the purpose of a circulating medium, and wanting, at the same time, specific funds to rest on for their redemption, they have seen them daily sink in value, notwithstanding every effort that has been made to support the same; insomuch that they are now passed, by common consent, in most parts of these United States, at least 39-40ths below their nominal value, and still remain in a state of depreciation, whereby the community suffers great injustice, the public finances are deranged, and the necessary dispositions for the defence of the country are much impeded and perplexed; and whereas, effectually to remedy these evils, for which purpose the United States are now become competent, their independency being well assured, their civil governments established and vigorous, and the spirit of their citizens ardent for exertion, it is necessary speedily to reduce the quantity of the paper medium in circulation, and to establish and appropriate funds that shall insure the punctual redemption of the bills: Therefore—

Resolved, That the several States continue to bring into the continental treasury, by taxes or otherwise, their full quotas of 15,000,000 of dollars monthly, as assigned them by the resolution of the 7th of October, 1779, a clause in the resolution of the 23d of February last, for relinquishing two-thirds of the said quotas, to the contrary notwithstanding; and that the States be further called on to make provision for continuing to bring into the said treasury their like quotas monthly, to the month of April, 1781, inclusive.

That silver and gold be receivable in payment of the said quotas, at the rate of one Spanish milled dollar in lieu of 40 dollars of the bills now in circulation.

That the said bills, as paid in, except for the months of January and February past, which may be necessary for the discharge of past contracts, be not reissued, but destroyed.

That as fast as the said bills shall be brought in to be destroyed, and funds shall be established, as hereafter mentioned, for other bills, other bills be issued, not to exceed, on any account, one-twentieth part of the nominal sum of the bills brought in to be destroyed.

That the bills which shall be issued be redeemable in specie within six years after the present, and bear an interest at the rate of five per centum per annum, to be paid also in specie at the redemption of the bills, or, at the election of the holder, annually, at the respective continental loan offices, in sterling bills of exchange, drawn by the United States on their commissioners in Europe, at 4*s*. 6*d*. sterling per dollar.

That the said new bills issue on the funds of individual States, for that purpose established, and be signed by persons appointed by them, and that the faith of the United States be also pledged for the payment of the said bills, in case any State on whose funds they shall be emitted should, by the events of war, be rendered incapable to

redeem them; which undertaking of the United States, and that of drawing bills of exchange, for payment of interest as aforesaid, shall be indorsed on the bills to be emitted, and signed by a commissioner to be appointed by Congress for that purpose.

That the face of the bills to be emitted read as follows, viz:

The possessor of this bill shall be paid ——— Spanish milled dollars by the 31st day of December, 1786, with interest, in like money, at the rate of five per cent. per annum, by the State of ———, according to an act of the legislature of the said State of the ——— day of ———, 1780.

And the indorsement shall be as follows, viz:

The United States insure the payment of the within bill, and will draw bills of exchange for the interest annually, if demanded, according to a resolution of Congress of the 18th day of March, 1780.

That the said new bills shall be struck under the direction of the board of treasury, in due proportion for each State, according to their said monthly quotas, and lodged in the continental loan offices in the respective States, where the commissioners to be appointed by Congress, in conjunction with such persons as the respective States appoint, shall attend to the signing of the said bills; which shall be completed no faster than in the aforesaid proportion of one to twenty of the other bills brought in to be destroyed, and which shall be lodged for that purpose in the said loan offices.

That as the said new bills are signed and completed, the States, respectively, on whose funds they issue, receive six-tenths of them, and that the remainder be subject to the orders of the United States, and credited to the States on whose funds they are issued, the accounts whereof shall be adjusted agreeably to the resolutions of the 6th of October, 1778.

That the said new bills be receivable in payment of the said monthly quotas at the same rate as aforesaid of specie, the interest thereon to be computed to the respective States to the day the payment becomes due.

That the respective States be charged with such parts of the interest on their said bills as shall be paid by the United States in bills of exchange; and the accounts thereof shall be adjusted agreeably to the resolution aforesaid of the 6th of October, 1779.

That whenever interest on the bills to be emitted shall be paid prior to their redemption, such bills shall be thereupon exchanged for others of the like tenor, to bear date from the expiration of the year for which such interest is paid.

That the several States be called to provide funds for their quotas of the said new bills, to be so productive as to sink or redeem one-sixth part of them annually after the first day of January next.

That nothing in the foregoing resolution shall be construed to ascertain the proportions of the expense incurred by the war, which each State, on a final adjustment, ought to be charged with, or to exclude the claims of any State to have the prices at which different States have furnished supplies for the army hereafter taken into consideration and equitably adjusted.

That the foregoing resolutions, with a letter from the President, be

despatched to the executive of the several States, and that they be requested to call their assemblies, if not already convened, as speedily as possible, to take them into immediate consideration, to establish ample and certain funds for the purposes therein mentioned, and to take every other measure necessary to carry the same into full and vigorous effect, and that they transmit their acts for that purpose to Congress without delay.

The bills issued under these proceedings were called the "new emission," in contradistinction to the former, called the "old emission." They were issued by the several States, and guaranteed by Congress. The government was not liable until the States failed to redeem.

On the 28th of June, 1780, resolutions were passed relative to ascertaining the specie value of the continental bills of the old emission, which are copied in an appendix to this brief, together with a table made in pursuance of these resolutions, showing the depreciation of continental money for every day of the entire period from September 1, 1777, to March 8, 1780.

On the 20th of February, 1782, the following proceedings took place in Congress:

Whereas it is become indispensably necessary to settle and adjust, and finally to determine the proportions to be borne by the several States of the expenses of the war, from the commencement thereof until the first day of January, 1782, except the moneys loaned;

And whereas, from the present situation of some of the States, the rule for fixing such proportions agreeably to the articles of confederation, to wit, a valuation of lands, buildings, and improvements, cannot, with any degree of certainty, be proceeded on; and as, from a consideration of the States having been variously affected by the war, the said rule, upon a valuation hereafter to be taken, might not, if strictly adhered to, without proper allowances for particular circumstances, produce the equal justice so desirable in this important object:

In order, therefore, that the aforesaid expenses may be proportioned in a speedy and equitable manner—

Resolved, That it be earnestly recommended to the several legislatures of the respective States, without delay, to authorize and empower the United States in Congress assembled, in the final settlement of the proportions to be borne by each State of the general expenses of the war, from the commencement thereof until the first day of January, 1782, except the moneys loaned to the United States, (for the security and discharge of the principal and interest of which Congress rely on a compliance with their requisition of third day of February, 1781,) to assume and adopt such principles as, from the particular circumstances of the several States, at different periods, may appear just and equitable, without being wholly confined to the rule laid down in the eighth article of the confederation, in cases where the same cannot be applied without manifest injustice:

That it be recommended to the States, respectively, to obtain and transmit to Congress, as soon as may be, all such documents and information as they may judge most proper to assist the judgment of

Congress in forming just estimates of the value and abilities of each State at the close of every year within the aforesaid term, in order to settle the proportions before mentioned.

Resolved, That upon settling the annual proportion of the several States of the expenses of the war, up to the first day of January, 1782, where any of the States have exceeded their proportions, an interest of six per centum per annum shall be allowed thereon, and a deduction equal thereto made in the future annual proportions of those States; and where any States shall appear to have been deficient in advancing their proportions, a like interest shall be charged thereon, and such deficiency charged in the future proportions of such States.

And whereas it is necessary to make a settlement of all accounts between the United States and each particular State, and the creditors of the United States within the same—

Resolved, That a commissioner for each State, for the purpose hereinafter expressed, be appointed as follows: he shall be nominated by the superintendent of the finances of the United States, and approved of by the legislature or the executive of the particular State for which he shall have been nominated; and upon the death, refusal, or inability to act, of such commissioner, another person to supply his place shall be nominated by the superintendent of the finances, and approved of by the executive or the delegates attending in Congress of the State for which he shall be nominated, as the legislature of the State shall direct; that the said commissioner so appointed shall have full power and authority finally to settle the accounts between the State for which he shall have been nominated and the United States; that all accounts of moneys advanced, supplies furnished, or services performed, between the United States and a particular State, shall be estimated according to the table of depreciation framed by the board of treasury on the 29th day of July, 1780, in consequence of the resolution of the 28th day of June preceding, to the time the same is extended: provided always, that specific supplies, furnished pursuant to requisitions of Congress, shall be settled agreeably to the prices mentioned in such requisitions; that he be also fully empowered and directed to liquidate and settle, in specie value, all certificates given for supplies by public officers to individuals, and other claims against the United States by individuals for supplies furnished the army, the transportation thereof and contingent expenses thereon, within the said State, according to the principles of equity and good conscience, in all cases which are not or shall not be provided for by Congress:

That the said commissioner, in the various branches of duty herein directed, shall, in such matters of form as regard merely the stating of his accounts, proceed agreeably to rules to be prescribed to him by the Comptroller of the Treasury; but in all other matters and things concerning the settlement with individual States, according to such modes and principles as Congress have directed or shall direct:

That each of the said commissioners be allowed a salary of fifteen hundred dollars per annum, and that he appoint his necessary clerks, with the salary of five hundred dollars per annum each, for the time they shall severally be employed in this service, which shall be in full for all services and expenses:

That the said commissioners, respectively, give public and early notices of the times and places of their settling, and the districts within which they settle accounts, that as well the public officers as the private individuals may have an opportunity to attend:

That each commissioner, before he enter upon the business for which he is appointed, shall take the following oath:

"I, A. B., do solemnly swear that I will truly and faithfully execute the office of commissioner to which I am appointed, according to my best skill and judgment, without favor or affection. So help me God."

That each clerk, at his appointment, shall also take an oath truly and faithfully to execute the duties of his office according to the best of his skill and understanding; and that certificates of these oaths be filed in the secretary's office of the State.

And it is hereby further recommended to the several legislatures of the respective States to grant the commissioner, by a law to be enacted for that purpose, a power to call witnesses and examine them upon oath or affirmation touching such claims and accounts as shall be produced for liquidation and settlement.

On the 8th of September, 1782, Congress resolved "that the commissioners appointed to settle the accounts of the several States, agreeably to the act of the 20th of February, 1782, be directed to examine, receive, and destroy so much of the old continental money as may be in the treasury of any of the States, not exceeding the quota of such State, as fixed by the act of Congress of the 18th of March, 1780, and transmit the superintendent of finance accounts of the money so destroyed."—(4 vol. O. J., 81.)

On the 17th of January, 1783, the following report was made by a grand committee, of which Mr. Rutledge was chairman:

"That individuals in each State who are possessed of continental paper money be entitled to receive from the commissioner who is or shall be appointed to settle the accounts of the several States, and of individuals therein, against the United States, a specie certificate for all such sums of said money as they shall respectively pay into the hands of such commissioner, at the rate of one silver dollar for every ——— continental dollar, the certificates to bear interest of six per cent. from the date, and be provided for as other public debts; but that no money shall be received or certificates granted by the said commissioners after the last day of December, 1783. The States which have not sunk the proportions assigned to them of the continental money be charged with the deficiency or the amount of what they would have sunk at the rate aforesaid." And the said report being taken into consideration, a motion was made by Mr. Williamson, seconded by Mr. Carroll, that the further consideration be postponed; which motion was lost.—(4 vol. O. J., p. 141.)

"A motion was made by Mr. Hamilton, seconded by Mr. Collins, that the blank be filled with the word 'forty;' which was lost.

"A motion was made by Mr. Osgood, seconded by Mr. Arnold, that the blank be filled with 'seventy-five;' which motion was lost."—(4 vol. O. J., pp. 141, 142.)

The solicitor has been unable to find any evidence showing that any further steps were taken in Congress in relation to the said resolution or the subject-matter thereof. He therefore computes the amount of the bills of credit authorized by the old Congress to be issued at $129,000,000, besides the fifty millions mentioned in the resolution of the 14th of January, 1779, being of the old emission. How much was issued where Congress guaranteed the State emissions he has been unable to ascertain. But he may err in these amounts, because he fears that in these ancient matters he may not have met with all the facts that are properly connected with these questions, even after vigilant and patient and laborious search.

The above is the last legislation under the old government which has been found.

Under the new constitutional government, the following is all the general legislation with which the solicitor has met, after very full and patient search.

The act for making provision for the payment of the debt of the United States, passed August 4, 1790, (1 U. S. L., 138.) The third section makes provision for funding the domestic debt, and is as follows:

SEC. 3. *Be it therefore further enacted,* That a loan, to the full amount of the said domestic debt, be, and the same is hereby, proposed, and that books for receiving subscriptions to the said loan be opened at the treasury of the United States, and by a commissioner to be appointed in each of the said States, on the first day of October next, to continue open until the last day of September following, inclusively; and that the sums which shall be subscribed thereto be payable in certificates issued for the said debt according to their specie value, and computing the interest upon such as bear interest to the last day of December next, inclusively; which said certificates shall be of these several descriptions, to wit:

Those issued by the Register of the Treasury.

Those issued by the commissioners of loans in the several States, including certificates given pursuant to the act of Congress of the 2d January, one thousand seven hundred and seventy-nine, for bills of credit of the several emissions of the twentieth of May, one thousand seven hundred and seventy-seven, and the eleventh of April, one thousand seven hundred and seventy-eight.

Those issued by the commissioners for the adjustment of the accounts of the quartermaster, commissary, hospital, clothing, and marine departments.

Those issued by the commissioners for the adjustment of accounts in the respective States.

Those issued by the late and present paymaster general, or commissioner of army accounts.

Those issued for the payment of interest, commonly called indents of interest.

And in the bills of credit, issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in the said bills for one dollar in specie.

SEC. 4. *And be it further enacted,* That for the whole, or any part,

of any sum subscribed to the said loan by any person or persons, or body politic, which shall be paid in the principal of the said domestic debt, the subscriber or subscribers shall be entitled to a certificate purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be expressed therein, equal to two-thirds of the sum so paid, bearing an interest of six per centum per annum, payable quarter-yearly, and subject to redemption by payments not exceeding, in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate; and to another certificate, purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be expressed therein, equal to the proportion of thirty-three dollars and one-third of a dollar upon a hundred of the sum so paid; which, after the year one thousand eight hundred, shall bear an interest of six per centum per annum, payable quarter-yearly, and subject to redemption by payments not exceeding, in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate: *Provided*, That it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right to do so.

SEC. 5. *And be it further enacted*, That for the whole, or any part, of any sum subscribed to the said loan by any person or persons, or body politic, which shall be paid in the interest of the said domestic debt, computed to the said last day of December next, or in the said certificates issued in payment of interest, commonly called indents of interest, the subscriber or subscribers shall be entitled to a certificate purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be specified therein, equal to that by him, her, or them so paid, bearing an interest of three per centum per annum, payable quarter-yearly, and subject to redemption by payment of the sum specified therein, whenever provision shall be made by law for that purpose.

Sections 9 and 10 make provision for those who do not subscribe for the loan as follows:

SEC. 9. *Be it further enacted*, That nothing in this act contained shall be construed in anywise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the said contracts and rights shall remain in full force and virtue.

And that such creditors may not be excluded from a participation in the benefit hereby intended to the creditors of the United States in general, while the said proposed loan shall be depending, and until it shall appear, from the event thereof, what further or other arrangements may be necessary respecting the said domestic debt.

SEC. 10. *Be it therefore further enacted*, That such of the creditors of the United States as may not subscribe to the said loan shall nevertheless receive, during the year one thousand seven hundred and ninety-one, a rate per centum on the respective amounts of their

respective demands, including interest to the last day of December next, equal to the interest payable to subscribing creditors, to be paid at the same times, at the same places, and by the same persons, as is hereinbefore directed concerning the interest on the stock which may be created in virtue of the said proposed loan. But as some of the certificates now in circulation have not heretofore been liquidated to specie value, as most of them are greatly subject to counterfeit, and counterfeits have actually taken place in numerous instances; and as embarrassment and imposition might, for these reasons, attend the payment of interest on those certificates in their present form, it shall, therefore, be necessary, to entitle the said creditors to the benefit of the said payment, that those of them who do not possess certificates issued by the Register of the Treasury, for the registered debt, should produce, previous to the first day of June next, their respective certificates, either at the treasury of the United States, or to some one of the commissioners to be appointed as aforesaid, to the end that the same may be cancelled, and other certificates issued in lieu thereof; which new certificates shall specify the specie amount of those in exchange for which they are given, and shall be otherwise of the like tenor with those heretofore issued by the said Register of the Treasury for the said registered debt, and shall be transferable on the like principles with those directed to be issued on account of the subscriptions to the loan hereby proposed.

Sections 16 and 17 provide concerning interest, and what shall be allowed to a State holding evidences of debt. They are as follows:

SEC. 16. *And be it further enacted*, That the interest upon the certificates which shall be received in payment of the sums subscribed towards the said loan shall be computed to the last day of the year one thousand seven hundred and ninety-one, inclusively; and the interest upon the stock which shall be created by virtue of the said loan shall commence or begin to accrue on the first day of the year one thousand seven hundred and ninety-two, and shall be payable quarter-yearly, at the same time, and in like manner, as the interest on the stock to be created by virtue of the loan above proposed in the domestic debt of the United States.

SEC. 17. *And be it further enacted*, That if the whole sum allowed to be subscribed in the debt or certificates of any State, as aforesaid, shall not be subscribed within the time for that purpose limited, such State shall be entitled to receive, and shall receive, from the United States, an interest per centum per annum upon so much of the said sum as shall not have been so subscribed, equal to that which would have accrued on the deficiency, had the same been subscribed in trust for the non-subscribing creditors of such State, who are holders of certificates or notes issued on account of services or supplies towards the prosecution of the late war, and the defence of the United States, or of some part thereof, to be paid in like manner as the interest on the stock which may be created by virtue of the said loan, and to continue until there shall be a settlement of accounts between the United States and the individual States; and in case a balance shall then appear in favor of such State, until provision shall be made for the said balance.

The next act is that of February 12, 1793, (1 U. S. L., 301,) and is as follows:

AN ACT relative to claims against the United States not barred by any act of limitation, and which have not been already adjusted.

Be it enacted, &c., That all claims upon the United States for services or supplies, or for other cause, matter, or thing, furnished or done previous to the 4th day of March, 1789, whether founded upon certificates, or other written documents from public officers, or otherwise, which have not already been barred by any act of limitation, and which shall not be presented at the treasury before the first day of May, 1794, shall forever after be barred and precluded from settlement or allowance: *Provided*, That nothing herein contained shall be construed to affect loan office certificates, certificates of final settlement, indents of interest, balances entered in the books of the Register of the Treasury, certificates issued by the Register of the Treasury, commonly called registered certificates, loans of money obtained in foreign countries, or certificates issued pursuant to the act entitled "An act making provision for the debt of the United States:" *And provided, further*, That nothing herein contained shall be construed to prohibit the proper officers of the treasury from demanding an account or accounts to be rendered for any moneys heretofore advanced and not accounted for, or from admitting, under the usual forms and restrictions, credits for expenditures equal to the sums which have been so advanced.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Auditor of the Treasury to receive all such claims aforesaid, as have not been heretofore barred by any act of limitation, as shall be presented before the time aforesaid, with the certificates or other documents in support thereof, and to cause a record to be made of the names of the persons, and of the time when the said claims are presented; which record shall be made in the presence of the person or persons presenting the same, and shall be the only evidence that the said claims were presented during the time limited by this act.

SEC. 3. *And be it further enacted*, That it shall be the duty of the accounting officers of the treasury to make report to Congress upon all such of the said claims as shall not be allowed to be valid, according to the usual forms of the Treasury.

This act remains in force, and bars all claims except loan office certificates, certificates of final settlement, indents of interest, balances entered on the books of the Register of the Treasury, commonly called registered certificates, and loans obtained abroad.

The 2d section does not extend to bills of credit, or other evidences of debt, the amount of which was rendered certain by their face, but to unliquidated claims.

The Auditor of the Treasury, under date of the 19th of January, 1795, makes the following statement, which is found on pages 172 and 174 of the American State Papers, volume of "Claims."

"I certify that, pursuant to an act of Congress passed on the 12th day of February, 1793, entitled 'An act relative to claims against the

United States not barred by any act of limitation, and which have not been already adjusted,' there have been received and registered in this office one hundred and twenty-four claims, presented by persons named in the accompanying abstract; which claims being distributed into fourteen classes, I have examined, and am of opinion that the same are inadmissible at the treasury, for the reasons hereafter assigned.—(p. 172.)

"CLASS 7.—This class is composed of three claims presented by John Nicholson, all of which are founded on bills of credit, issued by authority of the late government, commonly called bills of the old emission. For these Mr. Nicholson claims credit at par—that is, one specie dollar for every dollar in paper. The only provision heretofore made for this species of paper is by the act of Congress of the 4th of August, 1790, entitled 'An act making provision for the debt of the United States.' How far it may comport with justice to make provision on *different* principles for the particular cases now under consideration is a question proper for the decision of Congress. The money has not yet been *examined* or *counted*."—(p. 174.)

In the tabular statement of the 7th class, Anna Gibson is stated to have presented, on the 30th of March, 1794, continental bills of the old emission, by John Nicholson, to the amount of $27,235.—(p. 179.)

This is all the evidence concerning the right to recover. The specie value of these bills of credit at several periods prior to this presentation is shown by statements taken from the books of the Treasury Department, and printed as an appendix to this suit.

LEGAL PROPOSITIONS.

FIRST. *The amount due on the face of these bills of credit is not shown.*

The Auditor expressly states that he neither examined nor counted the bills in question; consequently he did not know how much the same amounted to. His statement is no evidence of the amount. It is the duty of the plaintiff to prove the amount before he can recover. This he has omitted, and the court cannot say how much there was of these bills of credit. Nor is it stated they were found to be genuine. The 10th section of the act of 1790 (1 U. S. L., p. 141) recites that the evidences of the public debt were "greatly subject to counterfeit, and counterfeits have actually taken place in numerous instances." This court cannot say that this unexamined mass of bills were genuine.

SECOND. *They were not presentable under the law of* 1793.

The second section of the act of 1793 relates not to certificates of loans and bills of credits, but to unliquidated claims, which required evidence to support them. It refers to certificates and documents which may be furnished in support of said claims. No such evidence would be required or needed in case of bills of credit. The object of this section of the act was to provide for registering in the books of the treasury all unliquidated claims which were not presentable and allowable under the loan act of 1790. There was no reason for requiring bills of credit to be registered.

THIRD. *They were not presented in conformity with the provisions of the act of* 1793.

The second section of the act of 1793 (1 U. S. L., 301, 302) requires the entry of the claims to be made "in the presence of the person or persons presenting the same, and shall be the only evidence that said claims were presented during the time limited by this act." It is not shown that these bills were presented and a record made thereof in the presence of Anna Gibson, nor of Nicholson, her attorney. The provisions of the act were not complied with, and therefore this statement of the auditor is not evidence of the fact of presentation and recording in presence of the party presenting.

The Auditor, near a year after their presentation, adjudicated and determined that these bills were not provided for under the act of 1793. His decision was subsequently sent to Congress. That body did nothing upon the subject, as far as we know. There is no evidence that the correctness of this decision was then questioned. It has remained undisturbed for more than sixty years. Its correctness cannot be questioned when we examine and scrutinize the act.

FOURTH. *They are barred by the statute of limitations of* 1793.

The first section of the act of 1793 (1 U. S. L., 301) bars all claims, excepting loan office certificates, &c., after the 1st of May, 1794. The language is broad enough to cover bills of credit, and was undoubtedly so intended. They could be presented as a subscription to the loan office to the 1st of May, 1794, and were then barred. Nicholson did not wish to present them to the loan offices when it required a hundred dollars in bills to make one of the loan. He sought to get an advantage which others had not enjoyed, and thereby failed to receive anything. At the loan office he could have got a certificate for $172 35, which was what others received, and more he was not entitled to. If he had chosen, when the bills were presented to the Auditor, to have gone to the loan office with them, he could have done so between that time and May. To have allowed him the face of the bills in money, after Congress had determined that they were worth only one cent on the dollar, would have been most extraordinary and absurd. The statement from the treasury and from General Washington's accounts show that these bills long before had only a nominal value. Mr. Nicholson demanded that all this evidence, known to everybody at the time, should be overlooked, and a new rule established in favor of the bills he presented. The law did not authorize this, and this court cannot make a law for him.

FIFTH. *If not barred by the statute of limitations, the claim made upon these bills is too stale to be recognized and allowed.*

This claim has lain since 1794, a period of 65 years, and no effort appears to have been made to collect it. Among individuals so stale a claim cannot be collected. The same rule should apply when the

party makes no effort to collect. In one-third of that time debts are presumed to have been paid, and this presumption may well apply to these ancient cases. At this late day the government cannot know whether it has been paid or not, nor, in most cases, make any proof. But the presumption of payment is sufficient.

R. H. GILLET, *Solicitor.*

DECEMBER 12, 1859.

APPENDIX.

IN CONGRESS, JUNE 28, 1780.

Whereas Congress, on the eighteenth day of April last, resolved, in the words following, viz:

That Congress will, as soon as may be, make such provisions for discharging or continuing the loans that have been made to these United States on the loan office certificates as that the holders of them shall sustain no loss thereon by any depreciation of the bills loaned subsequent to the respective dates of the said certificates: Therefore—

Resolved, That the principal of all loans that have been made to these United States shall finally be discharged by paying the full current value of the bills when loaned, which payment shall be made in Spanish milled dollars, or the current exchange thereof in other money at the time of payment.

That the value of the bills when loaned shall be ascertained for the purpose above mentioned by computing thereon a progressive rate of depreciation, commencing with the first day of September, 1777, and continuing to the eighteenth day of March, 1780, in geometrical proportion to the time, from period to period, as hereafter stated, assuming the depreciation of the several periods to be as follows, viz:

On the first day of March, 1778, one dollar and three quarters of a dollar of the said bills for one Spanish milled dollar; on the first of September, 1778, as four of the former for one of the latter; on the first of March, 1779, as ten of the former for one of the latter; on the first day of September, 1779, as eighteen of the former for one of the latter; and on the eighteenth day of March, 1780, as forty of the former for one of the latter.

That the principal of all certificates that have been taken out since the eighteenth day of March last shall be discharged at the rate of one Spanish milled dollar, or the current exchange thereof in other money at the time of payment, for forty dollars of the said bills of credit received on loan.

That the principal of all certificates that shall hereafter be taken out, until the further order of Congress, be discharged at the same rate, and in the same manner, as those that have been taken out since the eighteenth day of March last.

That the interest on all loan office certificates, at the rate of six per cent. per annum, computed on the principal ascertained as aforesaid, shall be discharged annually in like manner as the principal,

until the principal shall be paid: provided, nevertheless, that the same interest and mode of payment on certificates taken out before the first day of March, 1778, shall be continued as at present until the principal, ascertained as aforesaid, shall be ready to be discharged.

Ordered, That the board of treasury prepare the proper tables for direction of the commissioners of the continental loan offices in the several States in paying off the principal and interest of loans, agreeably to the foregoing resolutions.

Extract from the minutes.

GEORGE BOND,
Deputy Secretary.

TREASURY OFFICE, *July* 29, 1780.

In pursuance of the foregoing act, and on the principles therein laid down, the following table, for direction of the commissioners of the continental loan offices in the several States in paying off the principal and interest of loans, is prepared, showing the value of one hundred dollars of the currency of the United States loaned at any time between the first day of September, 1777, and the eighteenth day of March, 1780, in specie, with its interest for a year.

It is to be observed that the specie value of one hundred dollars, found on any day within the table, is to be multiplied by the number of hundreds expressed in the certificate of the same date whose value in specie is required, and in like manner the interest arising thereon, and the answer will be obtained.

Examples.—The specie value of a certificate of five hundred dollars and its interest, loaned the first day of May, 1779, is required on that day. By the table the specie value of one hundred current dollars is eight dollars twenty-ninetieths of a dollar and five-eighth parts of a ninetieth, which, multiplied by five, the hundred mentioned in the certificate, gives forty-one dollars thirteen-ninetieths and one-eighth for the principal. The interest thereon, forty-four-ninetieths and three-eighths, multiplied by five, the number of hundreds in the certificate, gives two dollars forty-one-ninetieths and seven eighths of a ninetieth for its interest in specie.

Dolls.	90ths.	8ths.
8	20	5
		5
41	13	1
0	44	3
		5
2	41	7

TABLE.

Value of one hundred dollars in specie, and its interest.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1777.							
September	1	100			6		
	2	99	62	2	5	88	2
	3	99	34	4	5	86	5
	4	99	6	7	5	85	
	5	98	69	3	5	83	2
	6	98	41	7	5	81	5
	7	98	14	4	5	86	
	8	97	77	2	5	78	3
	9	97	50	1	5	76	6
	10	97	23		5	75	1
	11	96	85	7	5	73	4
	12	96	59		5	71	7
	13	96	32	1	5	70	2
	14	96	5	3	5	68	5
	15	95	68	6	5	67	1
	16	95	42		5	65	4
	17	95	15	4	5	63	7
	18	94	79	1	5	62	2
	19	94	52	6	5	60	6
	20	94	26	4	5	59	5
	21	93		2	5	57	4
	22	93	64	2	5	55	
	23	93	38	1	5	54	3
	24	93	12	1	5	52	7
	25	92	76	2	5	51	3
	26	92	50	4	5	49	6
	27	92	24	6	5	48	2
	28	91	89	1	5	46	6
	29	91	63	5	5	45	1
	30	91	38	1	5	43	5
October	1	91	12	6	5	42	1
	2	90	77	3	5	40	5
	3	90	52	1	5	39	1
	4	90	27		5	37	4
	5	90	1	7	5	36	
	6	89	66	7	5	34	5
	7	89	42		5	33	
	8	89	17		5	31	5
	9	88	82	2	5	30	1
	10	88	57	5	5	28	5
	11	88	33		5	27	1
	12	88	8	3	5	25	5
	13	87	73	7	5	24	1
	14	87	49	4	5	22	6
	15	87	25	2	5	21	2
	16	87	1		5	19	6
	17	86	66	6	5	18	3
	18	86	42	6	5	16	7
	19	86	18	5	5	15	4
	20	85	84	6	5	14	
	21	85	60	7	5	12	5

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1777.							
October	22	85	37	----------	5	11	1
	23	85	13	2	5	9	6
	24	84	79	5	5	8	3
	25	84	56	1	5	6	7
	26	84	32	4	5	5	4
	27	84	9	1	5	4	1
	28	83	75	6	5	2	5
	29	83	52	4	5	1	2
	30	83	29	2	4	89	7
	31	83	6	----------	4	88	4
November	1	82	73	----------	4	87	1
	2	82	50	----------	4	85	6
	3	82	27	----------	4	84	3
	4	82	4	1	4	82	7
	5	81	71	3	4	81	5
	6	81	48	6	4	80	2
	7	81	26	----------	4	78	7
	8	81	3	3	4	77	4
	9	80	70	7	4	76	2
	10	80	48	4	4	74	7
	11	80	26	1	4	73	4
	12	80	3	6	4	72	1
	13	79	71	4	4	70	5
	14	79	49	3	4	69	4
	15	79	27	2	4	68	1
	16	79	5	2	4	66	7
	17	78	73	2	4	65	4
	18	78	51	3	4	64	1
	19	78	29	4	4	62	7
	20	78	7	6	4	61	5
	21	77	76	1	4	60	2
	22	77	54	4	4	59	----------
	23	77	32	7	4	57	6
	24	77	11	3	4	56	3
	25	76	80	----------	4	55	1
	26	76	58	6	4	53	7
	27	76	37	3	4	52	5
	28	76	16	----------	4	51	2
	29	75	84	7	4	50	7
	30	75	63	7	4	48	6
December	1	75	42	6	4	47	4
	2	75	21	6	4	46	2
	3	75	----------	7	4	45	----------
	4	74	70	----------	4	43	6
	5	74	49	2	4	42	4
	6	74	28	4	4	41	2
	7	74	8	----------	4	40	----------
	8	73	77	3	4	38	6
	9	73	56	7	4	37	6
	10	73	36	3	4	36	3
	11	73	16	----------	4	35	1
	12	72	85	5	4	33	7
	13	72	65	3	4	32	5
	14	72	45	2	4	31	4
	15	72	25	----------	4	30	2

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1777.							
December	16	72	5	----------	4	29	----------
	17	71	74	7	4	27	7
	18	71	55	----------	4	26	5
	19	71	35	1	4	25	4
	20	71	15	2	4	24	2
	21	70	85	4	4	23	1
	22	70	65	7	4	21	7
	23	70	46	1	4	20	6
	24	70	26	4	4	19	4
	25	70	7	----------	4	18	3
	26	69	77	4	4	17	2
	27	69	58	1	4	16	----------
	28	69	38	7	4	14	7
	29	69	19	4	4	13	6
	30	69	----------	----------	4	12	4
	31	68	71	----------	4	11	3
1778.							
January	1	68	52	----------	4	10	2
	2	68	32	7	4	9	1
	3	68	13	7	4	8	----------
	4	67	85	----------	4	6	7
	5	67	66	1	4	5	6
	6	67	47	2	4	4	5
	7	67	28	4	4	3	4
	8	67	9	7	4	2	3
	9	66	81	2	4	1	2
	10	66	62	5	4	----------	----------
	11	66	44	----------	3	98	----------
	12	66	25	6	3	87	7
	13	66	7	1	3	86	6
	14	65	78	6	3	85	5
	15	65	60	4	3	84	5
	16	65	42	2	3	83	4
	17	65	24	----------	3	82	3
	18	65	5	7	3	81	2
	19	64	77	7	3	80	2
	20	64	59	7	3	79	1
	21	64	41	7	3	78	----------
	22	64	24	----------	3	77	----------
	23	64	6	1	3	75	7
	24	63	78	3	3	74	7
	25	63	60	4	3	73	6
	26	63	42	7	3	72	6
	27	63	25	2	3	71	5
	28	63	7	5	3	70	5
	29	62	80	1	3	69	4
	30	62	62	5	3	68	5
	31	62	45	2	3	67	4
February	1	62	27	7	3	66	3
	2	62	10	4	3	65	3
	3	61	83	2	3	64	3
	4	61	66	1	3	63	2
	5	61	48	7	3	62	3
	6	61	31	6	3	61	2
	7	61	14	6	3	60	2

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1778.							
February	8	60	87	6	3	59	2
	9	60	70	6	3	58	1
	10	60	54	----------	3	57	1
	11	60	37	1	3	56	1
	12	60	20	2	3	55	1
	13	60	3	5	3	54	1
	14	59	77	3	3	53	1
	15	59	60	3	3	52	1
	16	59	43	5	3	51	1
	17	59	27	2	3	50	1
	18	59	10	6	3	49	1
	19	58	84	2	3	48	2
	20	58	67	7	3	47	2
	21	58	51	5	3	46	2
	22	58	35	2	3	45	2
	23	58	19	1	3	44	2
	24	58	2	7	3	43	3
	25	57	76	6	3	42	3
	26	57	60	6	3	41	3
	27	57	44	5	3	40	3
	28	57	28	6	3	39	4
March	1	57	12	6	3	38	4
	2	56	79	6	3	37	1
	3	56	56	7	3	35	6
	4	56	34	----------	3	34	8
	5	56	11	2	3	33	----------
	6	55	78	5	3	31	5
	7	55	56	----------	3	30	2
	8	55	33	5	3	29	----------
	9	55	11	2	3	27	5
	10	54	79	----------	3	26	8
	11	54	56	7	3	25	----------
	12	54	34	6	3	23	5
	13	54	12	7	3	22	8
	14	53	81	----------	3	21	----------
	15	53	59	2	3	19	6
	16	53	37	5	3	18	2
	17	53	16	----------	3	17	1
	18	52	84	5	3	15	7
	19	52	63	2	3	14	4
	20	52	42	----------	3	13	2
	21	52	20	7	3	12	----------
	22	51	89	6	3	10	6
	23	51	68	7	3	9	4
	24	51	47	7	3	8	2
	25	51	27	1	3	7	----------
	26	51	6	3	3	5	6
	27	50	75	6	3	4	4
	28	50	55	2	3	3	2
	29	50	34	7	3	2	----------
	30	50	13	4	3	----------	6
	31	49	84	2	2	89	5
April	1	49	64	2	2	88	3
	2	49	44	1	2	87	2
	3	49	24	1	2	86	----------

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
	1778.						
April	4	49	4	4	2	84	6
	5	48	74	4	2	83	5
	6	48	54	6	2	82	3
	7	48	35	1	2	81	2
	8	48	15	5	2	80	1
	9	47	86	2	2	78	7
	10	47	66	7	2	77	6
	11	47	47	5	2	76	5
	12	47	28	4	2	75	4
	13	47	9	3	2	74	3
	14	46	80	3	2	73	1
	15	46	61	3	2	72	2
	16	46	42	7	2	70	7
	17	46	23	6	2	69	6
	18	46	5	1	2	68	5
	19	45	76	5	2	67	4
	20	45	58	1	2	66	3
	21	45	39	6	2	65	3
	22	45	21	3	2	64	2
	23	45	3	1	2	63	1
	24	44	74	7	2	62	----------
	25	44	56	7	2	61	----------
	26	44	38	7	2	59	7
	27	44	20	7	2	58	6
	28	44	3	1	2	57	6
	29	43	75	2	2	56	5
	30	43	57	4	2	55	5
May	1	43	40	----------	2	54	4
	2	43	22	4	2	53	4
	3	43	5	----------	2	52	4
	4	42	77	5	2	51	3
	5	42	60	3	2	50	3
	6	42	43	1	2	49	3
	7	42	26	----------	2	48	2
	8	42	9	----------	2	47	2
	9	41	81	7	2	46	2
	10	41	65	----------	2	46	2
	11	41	48	1	2	44	2
	12	41	31	4	2	43	2
	13	41	14	6	2	42	2
	14	40	88	1	2	41	2
	15	40	71	5	2	40	2
	16	40	55	2	2	39	2
	17	40	38	6	2	38	2
	18	40	22	4	2	37	2
	19	40	6	2	2	36	3
	20	39	80	----------	2	35	3
	21	39	63	7	2	34	3
	22	39	47	7	2	33	3
	23	39	32	----------	2	32	4
	24	39	16	1	2	31	4
	25	39	----------	2	2	30	4
	26	38	74	4	2	29	4
	27	38	58	7	2	28	5
	28	38	43	3	2	27	6

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1778.							
May	29	38	27	6	2	26	6
	30	38	12	3	2	25	7
	31	37	87	----------	2	25	----------
June	1	37	71	5	2	24	----------
	2	37	56	3	2	23	1
	3	37	41	1	2	22	2
	4	37	26	----------	2	21	2
	5	37	11	----------	2	20	3
	6	36	86	1	2	19	4
	7	36	71	1	2	18	5
	8	36	56	3	2	17	6
	9	36	41	4	2	16	7
	10	36	26	7	2	16	----------
	11	36	12	1	2	15	1
	12	35	87	5	2	14	2
	13	35	73	1	2	13	3
	14	35	58	5	2	12	4
	15	35	44	2	2	11	5
	16	35	29	7	2	10	6
	17	35	15	6	2	9	7
	18	35	1	4	2	9	----------
	19	34	77	3	2	8	1
	20	34	63	2	2	7	3
	21	34	49	2	3	6	4
	22	34	35	3	2	5	5
	23	34	21	4	2	4	7
	24	34	7	5	2	4	----------
	25	33	83	7	2	3	1
	26	33	70	2	2	2	3
	27	33	56	4	2	1	4
	28	33	43	----------	2	----------	6
	29	33	29	4	1	89	7
	30	33	16	----------	1	89	1
July	1	33	2	5	1	88	2
	2	32	79	3	1	87	4
	3	32	66	1	1	86	6
	4	32	53	----------	1	85	7
	5	32	39	6	1	85	1
	6	32	26	5	1	84	3
	7	32	13	5	1	83	4
	8	32	----------	5	1	82	6
	9	31	77	6	1	82	----------
	10	31	64	7	1	81	2
	11	31	52	1	1	80	4
	12	31	39	3	1	79	6
	13	31	26	5	1	79	----------
	14	31	14	----------	1	78	3
	15	31	1	4	1	77	3
	16	30	79	----------	1	76	5
	17	30	66	4	1	75	7
	18	30	54	1	1	75	2
	19	30	41	6	1	74	4
	20	30	29	4	1	73	6
	21	30	17	2	1	73	----------
	22	30	5	----------	1	72	1

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1778.							
July	23	29	82	6	1	71	4
	24	29	70	7	1	70	6
	25	29	58	6	1	71	1
	26	29	46	7	1	69	3
	27	29	35	----	1	68	5
	28	29	23	1	1	67	7
	29	29	11	2	1	67	1
	30	28	89	4	1	66	4
	31	28	77	6	1	65	6
August	1	28	66	1	1	65	1
	2	28	54	5	1	64	3
	3	28	43	----	1	63	6
	4	28	31	5	1	63	----
	5	28	20	1	1	62	3
	6	28	8	6	1	61	5
	7	27	87	3	1	61	----
	8	27	76	1	1	60	2
	9	27	64	7	1	59	5
	10	27	53	5	1	59	----
	11	27	42	4	1	58	2
	12	27	31	4	1	57	5
	13	27	20	4	1	57	----
	14	27	9	4	1	56	2
	15	26	88	5	1	55	5
	16	26	77	5	1	55	----
	17	26	66	6	1	54	3
	18	26	56	----	1	53	6
	19	26	45	2	1	53	----
	20	26	34	5	1	52	3
	21	26	24	----	1	51	6
	22	26	13	3	1	51	1
	23	26	2	7	1	50	4
	24	25	82	2	1	49	7
	25	25	71	7	1	49	2
	26	25	61	3	1	48	5
	27	25	51	----	1	48	----
	28	25	40	6	1	47	3
	29	25	30	4	1	46	6
	30	25	20	2	1	46	1
	31	25	10	1	1	45	4
September	1	25	----	----	1	45	----
	2	24	78	5	1	44	2
	3	24	67	2	1	43	5
	4	24	56	----	1	42	7
	5	24	44	7	1	42	2
	6	24	33	6	1	41	5
	7	24	22	5	1	40	7
	8	24	11	5	1	40	2
	9	24	----	5	1	39	4
	10	23	79	5	1	38	7
	11	23	68	7	1	38	2
	12	23	58	1	1	37	5
	13	23	47	3	1	37	----
	14	23	36	5	1	36	3
	15	23	26	----	1	35	6

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1778.							
September	16	23	15	3	1	35	----------
	17	23	4	7	1	34	3
	18	22	84	4	1	33	6
	19	22	74	----------	1	33	1
	20	22	63	5	1	32	4
	21	22	53	2	1	32	----------
	22	22	43	----------	1	31	3
	23	22	32	6	1	30	6
	24	22	22	5	1	30	1
	25	22	12	4	1	29	4
	26	22	2	4	1	28	7
	27	21	82	3	1	28	2
	28	21	72	4	1	27	6
	29	21	62	5	1	27	1
	30	21	52	6	1	26	4
October	1	21	43	----------	1	25	7
	2	21	33	1	1	25	3
	3	21	23	3	1	24	6
	4	21	13	6	1	24	1
	5	21	4	1	1	23	5
	6	20	84	5	1	23	----------
	7	20	75	1	1	22	4
	8	20	65	5	1	21	7
	9	20	56	2	1	21	2
	10	20	46	7	1	20	6
	11	20	37	4	1	20	2
	12	20	28	2	1	19	5
	13	20	18	7	1	19	----------
	14	20	9	7	1	18	4
	15	20	----------	5	1	18	----------
	16	19	81	4	1	17	3
	17	19	72	5	1	16	7
	18	19	63	4	1	16	3
	19	19	54	5	1	15	7
	20	19	45	5	1	15	2
	21	19	36	6	1	14	6
	22	19	28	----------	1	14	2
	23	19	19	2	1	13	6
	24	19	10	4	1	13	1
	25	19	1	6	1	12	5
	26	18	83	1	1	12	1
	27	18	74	4	1	11	5
	28	18	66	----------	1	11	1
	29	18	57	4	1	10	5
	30	18	49	----------	1	10	1
	31	18	40	5	1	9	5
November	1	18	32	1	1	9	1
	2	18	23	7	1	8	5
	3	18	15	4	1	8	1
	4	18	7	3	1	7	5
	5	17	89	----------	1	7	1
	6	17	80	7	1	6	5
	7	17	72	6	1	6	1
	8	17	64	5	1	5	5
	9	17	56	5	1	5	1

TABLE—Continued.

Date.		Principal.			Interest		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1778.							
November	10	17	48	5	1	4	5
	11	17	40	5	1	4	1
	12	17	32	6	1	3	6
	13	17	24	6	1	3	2
	14	17	17	----	1	2	6
	15	17	9	1	1	2	2
	16	17	1	2	1	1	7
	17	16	83	5	1	1	3
	18	16	76	----	1	----	7
	19	16	68	2	1	----	3
	20	16	60	6	1	----	----
	21	16	53	----	----	89	4
	22	16	45	5	----	89	1
	23	16	38	----	----	88	5
	24	16	30	4	----	88	1
	25	16	23	1	----	87	6
	26	16	15	6	----	87	2
	27	16	8	3	----	86	7
	28	16	1	1	----	86	3
	29	15	83	7	----	86	----
	30	15	76	5	----	85	4
December	1	15	69	3	----	85	1
	2	15	62	2	----	84	5
	3	15	55	1	----	84	2
	4	15	48	----	----	83	7
	5	15	40	7	----	83	3
	6	15	33	7	----	83	----
	7	15	26	7	----	82	4
	8	15	19	7	----	82	1
	9	15	13	----	----	81	6
	10	15	6	1	----	81	3
	11	14	89	2	----	80	7
	12	14	82	4	----	80	4
	13	14	75	6	----	80	1
	14	14	69	----	----	79	5
	15	14	62	2	----	79	2
	16	14	55	4	----	78	7
	17	14	48	7	----	78	4
	18	14	42	3	----	78	1
	19	14	35	6	----	77	5
	20	14	29	2	----	77	2
	21	14	22	5	----	76	7
	22	14	16	2	----	76	4
	23	14	9	6	----	76	1
	24	14	3	3	----	75	6
	25	13	87	----	----	75	3
	26	13	80	4	----	75	----
	27	13	74	2	----	74	5
	28	13	68	----	----	74	2
	29	13	61	6	----	73	7
	30	13	55	4	----	73	4
	31	13	49	3	----	73	1
1779.							
January	1	13	43	2	----	72	6
	2	13	37	1	----	72	3

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1779.							
January	3	13	31	----------	----------	72	----------
	4	13	25	----------	----------	71	5
	5	13	18	7	----------	71	2
	6	13	12	7	----------	70	7
	7	13	7	----------	----------	70	4
	8	13	1	----------	----------	70	2
	9	12	85	1	----------	69	7
	10	12	79	2	----------	69	4
	11	12	73	3	----------	69	1
	12	12	67	4	----------	68	6
	13	12	61	5	----------	68	4
	14	12	55	7	----------	68	1
	15	12	50	2	----------	67	6
	16	12	44	4	----------	67	3
	17	12	38	7	----------	67	1
	18	12	33	1	----------	66	6
	19	12	27	4	----------	66	3
	20	12	22	----------	----------	66	----------
	21	12	16	3	----------	65	7
	22	12	10	7	----------	65	3
	23	12	5	3	----------	65	----------
	24	11	89	7	----------	64	6
	25	11	84	3	----------	64	3
	26	11	79	----------	----------	64	1
	27	11	73	4	----------	63	6
	28	11	68	2	----------	63	4
	29	11	62	7	----------	63	1
	30	11	57	4	----------	62	6
	31	11	52	2	----------	62	4
February	1	11	47	----------	----------	62	1
	2	11	41	6	----------	61	7
	3	11	36	5	----------	61	4
	4	11	31	3	----------	61	2
	5	11	26	2	----------	60	7
	6	11	21	1	----------	60	5
	7	11	10	----------	----------	60	2
	8	11	10	7	----------	60	----------
	9	11	5	7	----------	59	6
	10	11	----------	7	----------	59	3
	11	10	85	6	----------	59	1
	12	10	80	7	----------	58	6
	13	10	75	7	----------	58	4
	14	10	71	----------	----------	58	2
	15	10	66	1	----------	57	7
	16	10	61	1	----------	57	5
	17	10	56	2	----------	57	3
	18	10	51	4	----------	57	----------
	19	10	46	5	----------	56	6
	20	10	41	7	----------	56	4
	21	10	37	1	----------	56	1
	22	10	32	3	----------	55	7
	23	10	27	6	----------	55	5
	24	10	23	----------	----------	55	3
	25	10	18	2	----------	55	----------
	26	10	13	5	----------	54	6

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1779.							
February	27	10	9	1	----------	54	4
	28	10	4	4	----------	54	2
March	1	10	----------	----------	----------	54	----------
	2	9	87	1	----------	53	6
	3	9	84	2	----------	53	5
	4	9	81	3	----------	53	3
	5	9	78	4	----------	53	2
	6	9	75	6	----------	53	1
	7	9	72	7	----------	52	7
	8	9	70	----------	----------	52	6
	9	9	67	2	----------	52	5
	10	9	64	3	----------	52	3
	11	9	61	5	----------	52	2
	12	9	58	7	----------	52	1
	13	9	56	1	----------	51	7
	14	9	53	3	----------	51	6
	15	9	50	5	----------	51	4
	16	9	47	7	----------	51	3
	17	9	45	1	----------	51	2
	18	9	42	3	----------	51	1
	19	9	39	5	----------	50	7
	20	9	36	7	----------	50	6
	21	9	34	2	----------	50	5
	22	9	31	4	----------	50	3
	23	9	28	7	----------	50	2
	24	9	26	1	----------	50	1
	25	9	23	4	----------	50	----------
	26	9	20	7	----------	49	6
	27	9	18	2	----------	49	5
	28	9	15	4	----------	49	4
	29	9	12	7	----------	49	2
	30	9	10	2	----------	49	1
	31	9	7	5	----------	49	----------
April	1	9	5	----------	----------	48	7
	2	9	2	4	----------	48	6
	3	8	89	7	----------	48	4
	4	8	87	2	----------	48	3
	5	8	84	6	----------	48	2
	6	8	82	1	----------	48	1
	7	8	79	5	----------	47	7
	8	8	77	----------	----------	47	6
	9	8	74	4	----------	47	5
	10	8	72	----------	----------	47	4
	11	8	69	4	----------	47	3
	12	8	66	7	----------	47	2
	13	8	64	4	----------	47	1
	14	8	62	----------	----------	46	7
	15	8	59	4	----------	46	6
	16	8	57	----------	----------	46	5
	17	8	54	4	----------	46	4
	18	8	52	----------	----------	46	2
	19	8	49	4	----------	46	1
	20	8	47	1	----------	45	7
	21	8	44	5	----------	45	6
	22	8	42	2	----------	45	5

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
	1779.						
April	23	8	39	6	----------	45	4
	24	8	37	2	----------	45	3
	25	8	34	7	----------	45	2
	26	8	32	4	----------	45	1
	27	8	30	1	----------	45	----------
	28	8	27	6	----------	44	6
	29	8	25	3	----------	44	5
	30	8	23	----------	----------	44	4
May	1	8	20	5	----------	44	3
	2	8	18	2	----------	44	2
	3	8	15	7	----------	44	1
	4	8	13	4	----------	44	----------
	5	8	11	1	----------	43	6
	6	8	8	7	----------	43	5
	7	8	6	4	---------	43	4
	8	8	4	2	----------	43	3
	9	8	1	7	----------	43	2
	10	7	89	5	----------	43	1
	11	7	87	3	----------	43	----------
	12	7	85	----------	----------	42	7
	13	7	82	6	----------	42	6
	14	7	80	4	----------	42	5
	15	7	78	2	----------	42	4
	16	7	75	7	----------	42	3
	17	7	73	5	----------	42	1
	18	7	71	4	----------	42	----------
	19	7	69	2	----------	41	7
	20	7	67	----------	----------	41	6
	21	7	64	6	----------	41	5
	22	7	62	4	----------	41	4
	23	7	60	3	----------	41	3
	24	7	58	1	----------	41	2
	25	7	55	7	----------	41	1
	26	7	53	6	----------	41	----------
	27	7	51	4	----------	40	7
	28	7	49	3	----------	40	6
	29	7	47	1	----------	40	5
	30	7	45	----------	----------	40	4
	31	7	42	7	----------	40	3
June	1	7	40	6	----------	40	2
	2	7	38	5	----------	40	----------
	3	7	36	4	----------	40	1
	4	7	34	3	----------	39	7
	5	7	32	2	----------	39	6
	6	7	30	1	----------	39	5
	7	7	28	----------	----------	39	4
	8	7	25	7	----------	39	3
	9	7	23	7	----------	39	2
	10	7	21	6	----------	39	1
	11	7	19	5	----------	39	----------
	12	7	17	5	----------	38	7
	13	7	15	4	----------	38	6
	14	7	13	4	----------	38	5
	15	7	11	3	----------	38	4
	16	7	9	3	----------	38	3

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1779.							
June	17	7	7	3	----------	38	2
	18	7	5	2	----------	38	1
	19	7	3	2	----------	38	----------
	20	7	1	2	----------	37	7
	21	6	89	2	----------	37	6
	22	6	87	2	----------	37	5
	23	6	85	2	----------	37	4
	24	6	83	2	----------	37	3
	25	6	81	2	----------	37	2
	26	6	79	2	----------	37	1
	27	6	77	2	----------	37	----------
	28	6	75	3	----------	36	7
	29	6	73	3	----------	36	6
	30	6	71	3	----------	36	5
July	1	6	69	4	----------	36	4
	2	6	67	4	----------	36	3
	3	6	65	5	----------	36	2
	4	6	63	5	----------	36	1
	5	6	61	6	----------	36	1
	6	6	59	6	----------	36	----------
	7	6	57	7	----------	35	6
	8	6	56	----------	----------	35	5
	9	6	54	1	----------	35	5
	10	6	52	1	----------	35	4
	11	6	50	2	----------	35	3
	12	6	48	3	----------	35	2
	13	6	46	4	----------	35	----------
	14	6	44	5	----------	35	1
	15	6	42	6	----------	35	----------
	16	6	40	7	----------	34	7
	17	6	39	1	----------	34	6
	18	6	37	2	----------	34	5
	19	6	35	3	----------	34	4
	20	6	33	4	----------	34	3
	21	6	31	6	----------	34	2
	22	6	29	7	----------	34	1
	23	6	28	1	----------	34	----------
	24	6	26	2	----------	33	7
	25	6	24	4	----------	33	4
	26	6	22	5	----------	33	6
	27	6	20	7	----------	33	6
	28	6	19	1	----------	33	4
	29	6	17	2	----------	33	3
	30	6	15	4	----------	33	2
	31	6	13	6	----------	33	2
August	1	6	12	----------	----------	33	----------
	2	6	10	2	----------	33	----------
	3	6	8	4	----------	32	7
	4	6	6	6	----------	32	6
	5	6	5	----------	----------	32	5
	6	6	3	2	----------	32	4
	7	6	1	4	----------	32	4
	8	5	89	6	----------	32	3
	9	5	88	----------	----------	32	2
	10	5	86	8	----------	32	1

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1779.							
August	11	5	84	5	----------	32	----------
	12	5	82	7	----------	31	7
	13	5	81	2	----------	31	6
	14	5	79	4	----------	31	6
	15	5	77	7	----------	31	5
	16	5	76	1	----------	31	4
	17	5	74	3	----------	31	3
	18	5	72	6	----------	31	2
	19	5	71	1	----------	31	2
	20	5	69	4	----------	31	1
	21	5	67	6	----------	31	----------
	22	5	66	1	----------	30	7
	23	5	64	4	----------	30	7
	24	5	62	7	----------	30	6
	25	5	61	2	----------	30	5
	26	5	59	5	----------	30	4
	27	5	58	----------	----------	30	4
	28	5	56	3	----------	30	3
	29	5	54	6	----------	30	2
	30	5	53	1	----------	30	1
	31	5	51	4	----------	30	----------
September	1	5	50	----------	----------	30	----------
	2	5	48	----------	----------	29	7
	3	5	46	----------	----------	29	6
	4	5	44	----------	----------	29	5
	5	5	42	----------	----------	29	4
	6	5	40	1	----------	29	3
	7	5	38	1	----------	29	2
	8	5	36	1	----------	29	1
	9	5	34	2	----------	29	----------
	10	5	32	2	----------	28	7
	11	5	30	2	----------	28	6
	12	5	28	3	----------	28	5
	13	5	26	4	----------	28	4
	14	5	24	5	----------	28	4
	15	5	22	5	----------	28	3
	16	5	20	6	----------	28	2
	17	5	18	7	----------	28	1
	18	5	17	----------	----------	28	----------
	19	5	15	1	----------	27	7
	20	5	13	3	----------	27	6
	21	5	11	4	----------	27	5
	22	5	9	5	----------	27	4
	23	5	7	6	----------	27	3
	24	5	5	7	----------	27	3
	25	5	4	1	----------	27	2
	26	5	2	2	----------	27	1
	27	5	----------	4	----------	27	----------
	28	4	88	5	----------	26	7
	29	4	86	7	----------	26	6
	30	4	85	1	----------	26	6
October	1	4	83	2	----------	26	5
	2	4	81	4	----------	26	4
	3	4	79	6	----------	26	3
	4	4	78	----------	----------	26	2

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1779.							
October	5	4	76	2	----------	26	1
	6	4	74	4	----------	26	----------
	7	4	72	6	----------	26	----------
	8	4	71	----------	----------	25	7
	9	4	69	2	----------	25	6
	10	4	67	5	----------	25	5
	11	4	65	7	----------	25	4
	12	4	64	1	----------	25	4
	13	4	62	4	----------	25	3
	14	4	60	6	----------	25	2
	15	4	59	1	----------	25	1
	16	4	57	3	----------	25	----------
	17	4	55	5	----------	24	7
	18	4	54	----------	----------	24	7
	19	4	52	3	----------	24	6
	20	4	50	6	----------	24	5
	21	4	49	1	----------	24	4
	22	4	47	4	----------	24	4
	23	4	45	7	----------	24	3
	24	4	44	2	----------	24	1
	25	4	42	5	----------	24	1
	26	4	41	----------	----------	24	----------
	27	4	39	5	----------	24	----------
	28	4	37	6	----------	23	7
	29	4	36	1	----------	23	6
	30	4	34	5	----------	23	5
	31	4	33	----------	----------	23	5
November	1	4	31	4	----------	23	4
	2	4	29	7	----------	23	3
	3	4	28	2	----------	23	2
	4	4	26	6	----------	23	1
	5	4	25	1	----------	23	----------
	6	4	23	5	----------	23	----------
	7	4	22	1	----------	22	7
	8	4	20	4	----------	22	6
	9	4	19	----------	----------	22	5
	10	4	17	4	----------	22	5
	11	4	16	----------	----------	22	4
	12	4	14	4	----------	22	4
	13	4	13	----------	----------	22	3
	14	4	11	4	----------	22	2
	15	4	10	----------	----------	22	1
	16	4	8	4	----------	22	----------
	17	4	7	----------	----------	22	----------
	18	4	5	5	----------	21	7
	19	4	4	1	----------	21	6
	20	4	2	5	----------	21	6
	21	4	1	2	----------	21	5
	22	3	89	6	----------	21	4
	23	3	88	2	----------	21	3
	24	3	86	7	----------	21	3
	25	3	85	4	----------	21	2
	26	3	84	----------	----------	21	1
	27	3	82	5	----------	21	1
	28	3	81	1	----------	21	----------

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths	8ths.
1779.							
November	29	3	79	6	----------	21	----------
	30	3	78	3	----------	20	7
December	1	3	77	----------	----------	20	6
	2	3	75	5	----------	20	5
	3	3	74	2	----------	20	5
	4	3	72	7	----------	20	4
	5	3	71	4	----------	20	3
	6	3	70	1	----------	20	3
	7	3	68	6	----------	20	2
	8	3	67	3	----------	20	2
	9	3	66	----------	----------	20	1
	10	3	64	5	----------	20	----------
	11	3	63	3	----------	19	7
	12	3	62	----------	----------	19	7
	13	3	60	5	----------	19	6
	14	3	59	3	----------	19	6
	15	3	58	----------	----------	19	5
	16	3	56	6	----------	19	4
	17	3	55	3	----------	19	3
	18	3	54	1	----------	19	3
	19	3	52	6	----------	19	3
	20	3	51	4	----------	19	2
	21	3	50	2	----------	19	1
	22	3	48	7	----------	19	----------
	23	3	47	5	----------	19	----------
	24	3	46	3	----------	19	----------
	25	3	45	1	----------	18	7
	26	3	43	7	----------	18	6
	27	3	42	5	----------	18	5
	28	3	41	3	----------	18	5
	29	3	40	1	----------	18	5
	30	3	38	7	----------	18	4
	31	3	37	5	----------	18	3
1780.							
January	1	3	36	3	----------	18	3
	2	3	35	1	----------	18	2
	3	3	34	----------	----------	18	2
	4	3	32	6	----------	18	2
	5	3	31	4	----------	18	1
	6	3	30	2	----------	18	----------
	7	3	29	1	----------	18	----------
	8	3	28	----------	----------	17	7
	9	3	26	6	----------	17	6
	10	3	25	4	----------	17	6
	11	3	24	3	----------	17	5
	12	3	23	1	----------	17	5
	13	3	22	----------	----------	17	4
	14	3	20	7	----------	17	3
	15	3	19	5	----------	17	3
	16	3	18	4	----------	17	3
	17	3	17	3	----------	17	2
	18	3	16	2	----------	17	1
	19	3	15	----------	----------	17	1
	20	3	13	7	----------	17	----------
	21	3	12	6	----------	16	7

TABLE—Continued.

Date.		Principal.			Interest.		
		Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1780.							
January	22	3	11	5	----------	16	7
	23	3	10	4	----------	16	6
	24	3	9	3	----------	16	5
	25	3	8	2	----------	16	5
	26	3	7	1	----------	16	3
	27	3	6	----------	----------	16	4
	28	3	4	7	----------	16	3
	29	3	3	7	----------	16	3
	30	3	2	6	----------	16	2
	31	3	1	5	----------	16	2
February	1	3	----------	5	----------	16	2
	2	2	89	4	----------	16	1
	3	2	88	3	----------	16	----------
	4	2	87	2	----------	16	----------
	5	2	86	2	----------	15	7
	6	2	85	1	----------	15	7
	7	2	84	1	----------	15	6
	8	2	83	----------	----------	15	6
	9	2	82	----------	----------	15	5
	10	2	81	----------	----------	15	5
	11	2	79	7	----------	15	4
	12	2	78	7	----------	15	4
	13	2	77	7	----------	15	3
	14	2	76	6	----------	15	3
	15	2	75	6	----------	15	2
	16	2	74	6	----------	15	2
	17	2	73	6	----------	15	1
	18	2	72	6	----------	15	1
	19	2	71	6	----------	15	----------
	20	2	70	5	----------	15	----------
	21	2	69	5	----------	14	7
	22	2	68	5	----------	14	7
	23	2	67	5	----------	14	6
	24	2	66	6	----------	14	6
	25	2	65	6	----------	14	5
	26	2	64	6	----------	14	5
	27	2	63	6	----------	14	5
	28	2	62	6	----------	14	4
	29	2	61	6	----------	14	3
March	1	2	60	7	----------	14	3
	2	2	59	7	----------	14	2
	3	2	58	7	----------	14	2
	4	2	58	----------	----------	14	2
	5	2	57	----------	----------	14	1
	6	2	56	----------	----------	14	1
	7	2	55	----------	----------	14	----------
	8	2	54	1	----------	14	----------
	9	2	53	1	----------	13	7
	10	2	52	1	----------	13	7
	11	2	51	2	----------	13	7
	12	2	50	2	----------	13	6
	13	2	49	3	----------	13	6
	14	2	48	4	----------	13	5

TABLE—Continued.

Date.	Principal.			Interest.		
	Dollars.	90ths.	8ths.	Dollars.	90ths.	8ths.
1780.						
March 15	2	47	5	----------	13	5
16	2	46	6	----------	13	4
17	2	45	7	----------	13	4
18	2	45	----------	----------	13	4

Extract from the minutes.

CHARLES LEE, *Secretary.*

A correct copy from the printed statement.

F. LOWNDES.

TREASURY DEPARTMENT, *Register's Office, February* 7, 1859.

I certify the foregoing to be a true extract from a record of statements on file in this office.

F. BIGGER, *Register.*

APPENDIX II.

TREASURY DEPARTMENT,
Register's Office, December 14, 1859.

SIR: In compliance with your request, I herein enclose a copy of pages 51 and 52 of an account of General Washington, on file in this office.

Very respectfully, your obedient servant,
F. BIGGER, *Register.*

R. H. GILLET, Esq.,
Solicitor of Court of Claims.

Recapitulation or general statement of the accounts for the years 1775, '76, '77, '78, *and* '79, *and for* 1780, '81, '82, *and* '83.

DR.

	Dollars.	Lawful.
To household expenses, (exclusive of the provisions had from commissaries and contractors, and liquors received from them and others,) viz:		
£ s. d.		
Mr. Austin's account No. 1 ..... 496 19 4		
Mrs. Smith's account No 2, £563 12s., Yk. C. T., equal to 422 14 0		
Major Gibb's account No. 3 ..... 483 6 0	65,990	
Captain Colfax's account No. 4 ..... 1,984 15 0	3,260	£3,387 14 4
Total household expenditures	69,250	3,387 14 4
Expended for secret intelligence°	7,617	1,982 10 0
Expended in reconnoitring and in travelling, sometimes with and sometimes without the army, but generally with a party of horse	42,755¾	1,874 8 8
Miscellaneous charges amounts, per account, to	40,451¼	2,952 10 1
Total	160,074	10,197 3 1
To $160,074 extended in lawful money according to the scale of depreciation, per contra	.....	6,114 14 0
Expenditures of eight years	.....	16,311 17 1

° 200 guineas advanced General McDougall for the like purpose is not included in this sum, as I have had no control of it, and know nothing of the application.

CR.

		Dollars.	Lawful.
1775—1777	By amount of several sums received per account to the date hereof	.....	£3,126 7 9
July 1,1783	By amount received since to the present date ..	160,074	6,450 7 0

By $160,074 *turned into lawful money by the scale of depreciation adopted by Congress, as follows, viz:*

When received.	Dollars.		Value in lawful money.
Year and month.	Nominal.	By depreciation.	
1777. February	2,610	2,610	£782 10 0
April	1,000	1,000	300 0 0
May	1,000	1,000	300 0 0
July	1,000	1,000	300 0 0
	1,000	1,000	300 0 0
August	500	500	150 0 0

RECAPITULATION—Continued. Cr.

When received. Year and month.	Dollars. Nominal.	By depreciation.	Value in lawful money.	
1777. August	1,000	1,000	£300 0 0	
October	1,000	911	273 6 0	
	1,000	911	273 6 0	
December	1,000	754	226 4 0	
1778. January	2,000	1,370	411 0 0	
	1,000	685	205 10 0	
April	1,000	497	146 2 0	
May	2,000	868	260 8 0	
June	2,000	756	226 16 0	
August	2,000	574	172 4 0	
	100	29	8 14 0	
September	1,000	250	75 0 0	
November	2,000	366	109 16 0	
December	2,000	314	94 4 0	
1779. March	2,000	200	60 0 0	
	500	50	15 0 0	
April	2,000	180	54 0 0	
June	3,000	220	66 12 0	
September	2,000	110	33 0 0	
November	3,000	129	38 14 0	
December	3,000	114	34 4 0	
1780. January	3,000	102	30 12 0	
February	5,000	130	39 0 0	
March	3,000	78	23 8 0	
	3,000	75	22 10 0	
April	3,000	75	22 10 0	
May	4,000	100	30 0 0	
	4,800	120	36 0 0	
June	4,300	108	32 8 0	
	10,000	250	75 0 0	
August	5,000	125	37 10 0	
September	8,000	200	60 0 0	
	5,000	125	37 10 0	
November	1,000	25	7 10 0	
1781. February	9,264	231	69 6 0	
March	30,000	750	225 0 0	
May	20,000	500	150 0 0	
	160,074	20,393	Amounting to	£6,114 14 0
1783, July 1.—By balance due G. Washington and carried to new account, folio 65				620 8 4
				16,311 17 1

Note.—104,364 of the above dollars were received after March, 1780, and although credited at 40 for 1, many of them did not fetch 1 for a hundred; while 27,775 of them are returned without deducting anything from the above account.

G°. WASHINGTON.

Treasury Department, *Register's Office*, *December* 14, 1859.

I certify the foregoing to be a true copy of pages 51 and 52 of an account of General George Washington with the United States, now on file in this office, with the vouchers accompanying report No. 3700, which said account is believed to be in his (General Washington) own handwriting.

F. BIGGER, *Register*.

IN THE COURT OF CLAIMS.

June 11, *A. D.* 1860.

ANNA GIBSON'S ADMINISTRATOR *vs.* THE UNITED STATES.

SCARBURGH, J.

By an act of Congress approved February 12, A. D. 1793, it was provided as follows:

§ 1. "That all claims upon the United States for services or supplies, or for other cause, matter, or thing furnished or done previous to the fourth day of March, one thousand seven hundred and eighty-nine, whether founded upon certificates or other written documents from public officers, or otherwise, which have not already been barred by any act of limitation, and which shall not be presented at the treasury before the first day of May, one thousand seven hundred and ninety-four, shall forever after be barred and precluded from settlement or allowance: *Provided*, That nothing herein contained shall be construed to affect loan office certificates, certificates of final settlement, indents of interest, balances entered in the books of the Register of the Treasury, certificates issued by the Register of the Treasury, commonly called registered certificates, loans of money obtained in foreign countries, or certificates issued pursuant to the act intituled 'An act making provision for the debt of the United States:' *And provided further*, That nothing herein contained shall be construed to prohibit the proper officers of the treasury from demanding an account or accounts to be rendered for any moneys heretofore advanced and not accounted for, or from admitting, under the usual forms and restrictions, credits for expenditures equal to the sums which have been so advanced."

§ 2. "That it shall be the duty of the Auditor of the Treasury to receive all such claims aforesaid as have not been heretofore barred by any act of limitation as shall be presented before the time aforesaid, with the certificates or other documents in support thereof, and to cause a record to be made of the names of the persons and of the time when the said claims are presented; which record shall be made in the presence of the person or persons presenting the same, and shall be the only evidence that the said claims were presented during the time limited by this act."

§ 3. "That it shall be the duty of the accounting officers of the treasury to make report to Congress upon all such of the said claims as shall not be allowed to be valid according to the usual forms of the treasury." (1 Stat. at L., pp. 301—2, ch. 6.)

Under this act a claim was presented on the 30th day of March, A. D. 1794, by John Nicholson, for and in behalf of the petitioner's intestate, for $27,235, as due her on bills of credit of the old emission; but it was not allowed to be valid by the accounting officers of the treasury. The Auditor, in his report, said: "I certify that, pursuant to an act of Congress passed on the 12th day of February, 1793, entitled 'An act relative to claims against the United States not barred by any act of limitation, and which have not been already

adjusted,' there have been received and registered at this office one hundred and twenty-four claims, presented by persons named in the accompanying abstract; which claims, being distributed into fourteen classes, I have examined and am of opinion that the same are inadmissible at the treasury for the reasons hereafter assigned in treating of each particular class." He put the decedent's claim in class 7, and said: "This class is composed of three claims presented by John Nicholson, all of which are founded on bills of credit issued by authority of the late government, commonly called bills of the old emission. For these Mr. Nicholson claims credit at par; that is, one specie dollar for every dollar in paper. The only provision hitherto made for this species of paper is by the act of Congress of the 4th of August, 1790, entitled 'An act making provision for the debt of the United States.' How far it may comport with justice to make provision on different principles for the particular cases now under consideration, is a question proper for the decision of Congress. The money has not yet been examined or counted." (9 Am. St. Papers, Claims, pp. 172, 174.)

The petitioner asks "that payment of principal and interest, according to the terms of the original obligation, may now be made," but offers no other evidence in support of his claim than the report of the accounting officers of the treasury. He alleges that "the original record and vouchers accompanying it are believed to have perished in the conflagration of the Treasury Department, as upon inquiry they cannot be found there; but the report from the Secretary still, it is believed, remains among the archives of Congress, and it may be found published in full in Gales & Seaton's State Papers, title 'Claims,' pp. 172, 183."

When claims were presented at the treasury under the first section of the act of February 12, A. D. 1793, it was the duty of the Auditor of the Treasury, under the second section, to receive them, with the certificates or other documents in support thereof, and to cause a record to be made in the presence of the persons presenting the same, of the names of such persons, and of the time when the claims were presented. This was done in the petitioner's case. The claim was presented at the treasury, and, with the documents in support of it, was received by the Auditor of the Treasury, who duly made a record of the claimant's name and of the time when her claim was presented. This record is evidence that the claim was presented at the treasury at the time recorded; but it is not, nor was intended to be, anything more. The object of the statute seems to have been to effect a settlement at the treasury of all the claims embraced by it that could be settled there, and to bring the rest before Congress with a view to such further legislation as might be proper, or in default of their presentation at the treasury within the time limited, to bar and preclude them from settlement or allowance thereafter.

As soon as "such of the said claims as" had not been "allowed to be valid" were reported to Congress, the whole object of the statute, as to them, was accomplished. Nothing more was required. Congress had merely, by the statute, sought to obtain information of the existence and character of those claims, and this object had been at-

tained: the statute as to them was *functus officio*. The relations of the parties were in no way altered. Congress had neither sought for nor provided the means of securing evidence in support of the claims, but each claimant was left to take such measures for the further prosecution of his claim as he might deem expedient. The documents which he had presented in support of his claim, and which had been received by the Auditor of the Treasury, were still his, and he was entitled to have them returned to him. The statute did not require that they should be reported to Congress; and the whole object of presenting them at the treasury having been effected, they were again subject to the control of their owner, and he was at full liberty to have them restored to him.

What was done with reference to the documents presented at the treasury with the present claim, after the report of the accounting officers of the treasury was made to Congress, there is no direct evidence now before us. All that I know is, that after the lapse of more than sixty years from the date of that report, and after the death of Anna Gibson, and after "the conflagration of the Treasury Department," in which, it is believed, the vouchers accompanying the claim perished, this claim was presented here, and, that it does not appear, by any direct evidence, that Anna Gibson, in her lifetime, or any person for her, in her lifetime or afterwards, took any steps in the meantime in relation to her claim. Under such circumstances, especially when we take into consideration that the amount claimed was $27,235, and that, after the report of the accounting officers of the treasury was made to Congress, Anna Gibson was entitled to demand the documents which had been presented with her claim and to have them restored to her the presumption is, that she made such demand, and that it was complied with. This was the course dictated by a due regard to her own interests, and in the absence of proof to the contrary, under the circumstances now before us, it must be presumed that it was adopted. The allegation, therefore, that "the original record and vouchers accompanying it are believed to have perished in the conflagration of the Treasury Department, as upon inquiry they cannot be found there," does not lay a sufficient foundation to dispense with the production of the bills of credit, or to authorize the introduction of secondary evidence in regard to them. The presumption is, that they were not in the Treasury Department at the time of the conflagration. Moreover, if they were withdrawn from the treasury, as they would have passed by delivery like bank notes, they would become the property of any *bona fide* holder of them. Hence, it is not enough to show that Anna Gibson was the owner of them in 1794, but it must appear that they now belong to her representatives.

But even if a sufficient foundation were laid to dispense with the actual production of the bills of credit, and the report of the accounting officers of the treasury were admissible as secondary evidence, still that report does not show either that Anna Gibson, in 1794, held bills of credit of the old emission, or that they amounted to $27,235. That report cannot be evidence of matter which it does not contain. It does not therein appear that Anna Gibson presented bills of credit of the old emission amounting to $27,235, but only that she claimed that sum for such bills. The documents presented may or may not have

been such bills, and they may or may not have amounted to $27,235. They were not either "examined or counted;" nor, as the claim could not be allowed, was it the duty of the accounting officers of the treasury to do either the one or the other. The Auditor, in receiving the claim with the documents in support of it, and making a record of the name of Anna Gibson and of the time when the claim was presented, and the accounting officers of the treasury, in making report upon the claim to Congress, did all that the statute either authorized or required. I cannot, therefore, say from that report either that the papers offered and received were in fact bills of credit of the old emission, or that they amounted to $27,235. All that is stated in the report may be true, and yet the documents not be bills of credit of the old emission, or not amount to the one hundredth part of the sum claimed. No inference, either the one way or the other, can be drawn from the report itself. It was valueless for any such purpose in the beginning, and the mere lapse of time has added nothing and could add nothing to it in this respect.

But again, even if the report of the accounting officers of the treasury actually showed that the documents presented at the treasury were bills of credit of the old emission amounting to the sum claimed, still there is nothing to show *when* they were issued. By the resolution of January 2, A. D. 1779, the emissions of May 20, A. D. 1777, and of April 11, A. D. 1778, were ordered to be taken out of circulation, and were required to be brought in for that purpose by the 1st day of June, A. D. 1779, else not afterwards to be redeemable. Were they of either of these emissions? If they were, then, not having been presented under the provisions of the resolution of January 2, A. D. 1779, they were thereby barred. Moreover, it was stated in that very resolution as the reason why they should be brought in, that many counterfeits of the two emissions just noticed had appeared in circulation. Were the documents presented by Anna Gibson a portion of these counterfeits? They may have been without any fault whatever on her part, for she may have received them in good faith without any knowledge of their character. If they were, this sufficiently accounts for the fact that her claim, which, in 1794, she regarded as valid and as entitling her to receive from the United States $27,235, was never again presented in her lifetime, and was left to slumber for more than sixty years. And, too, the report of the accounting officers of the treasury would be as consistent with the fact that those documents were counterfeits as with the fact that they were not counterfeits. Nor does the hypothesis that they may have been counterfeits imply any imputation upon Anna Gibson, or upon the present claimant. It is, on the contrary, entirely consistent with the good faith of all concerned.

My opinion is, that it does not appear from the evidence that Anna Gibson was at any time the holder of bills of credit of the old emission amounting to $27,235, or to any other sum. At the present day, when the documents presented at the treasury are not produced, and it does not sufficiently appear what has become of them, something more than the mere record made by the Auditor of the Treasury, who neither examined nor counted them, is necessary to show either their genuineness or their amount.

My opinion is, that the petitioner is not entitled to relief.

IN THE COURT OF CLAIMS.

June 11, 1860.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, *vs.* THE UNITED STATES.

LORING, J.

In this case I am of opinion that the evidence on which the petitioner has rested his case is not admissible.

In 1793 the United States were indebted for supplies furnished and services done in the war of the revolution, and Congress had from time to time made efforts to get in all such claims and to ascertain their amount in reference to their arrangement and liquidation. Among other acts for this purpose, they passed the resolutions of June 3, 1784, by which such claims and certificates of quartermasters and commissaries, &c., for such claims, were to be brought in to the local commissioners, by whom they were to be adjusted on evidence and certified; and these resolutions provided as follows: "That an interest of six per cent. per annum shall be allowed to all creditors of the United States for *supplies furnished or service done* from the time that the payment became due."

Now, I think, for the reasons stated in the opinion of this court in the case of Addison, administrator of Margaret Leitch, *vs.* The United States, that the resolutions of June 3, 1784, and their words "*supplies furnished and services done*," referred exclusively to claims for work and materials of mechanics and laborers, &c., and for supplies, such as provisions, food, fuel, and military stores, use of warehouses, &c.; and that the act of February 12, 1793, had the same purpose as the resolutions of 1784, and was applicable exclusively to the same kinds of claims. The words of the act of 1793 are, "all claims upon the United States for *services or supplies*, or for other cause, matter, or thing, *furnished* or *done* previous to the 4th day of March, 1789." This is but a paraphrase of the language of the resolutions of 1784, "for supplies furnished and services done," and I think means no more; for by the general rule of *ejusdem generis*, the general words are to be construed in reference to the particular words that precede them.

Then the act of 1793 proceeds thus: "Whether founded upon certificates or other written documents of public officers, or *otherwise*." This relates only to the evidence of claims referred to; and here again, by the same rule of *ejusmodi generis*, the word "*otherwise*" is to be construed as referring to evidences of debt of the like nature as "certificates and other written documents of public officers;" and then the provision shows that the claims referred to in the act were matters of account, to be settled on evidence; and of this the 2d section of the act of 1793 is, I think, conclusive, for it makes it the duty of the Auditor of the Treasury "to receive *all* such claims aforesaid," * * * "with the certificates or other documents in support thereof."

Now, bills of credit were not claims for *supplies* or *services*, or for

anything *furnished* or *done*, or in any way or degree of that nature; they did not depend on certificates or other written documents or any extrinsic evidence, but they vouched themselves like bank bills, and was, like them, currency. There was no occasion to ascertain their amount, for it was not in dispute, nor disputable; for each showed its amount, and the records of the government showed their issues.

Therefore I think that bills of credit were not within the operation of the act of 1793; that that act did not require or direct that they should be carried in to the Auditor of the Treasury, or authorize him to receive them; and that he was not the agent of the United States to receive them or record them, or to do anything in relation to them under that act, and that therefore his record or report is not evidence against the United States of the facts it contains, nor admissible for any purpose whatever, any more than the same statement made by any other unauthorized person would be.

The rule that the United States is not liable for the unauthorized acts of their officers is a maxim here; and as the United States in all its vast concerns acts only by officers and agents, the strict enforcement of the rule is an absolute necessity.

If the record or report of the Auditor is excluded, there is nothing on which the petitioner's claim can rest. I am of opinion he is not entitled to relief.

IN THE COURT OF CLAIMS.

June 11, 1860.

RICHARD S. COXE, ADMINISTRATOR OF ANNA GIBSON, *vs.* THE UNITED STATES.

HUGHES, J.

The legal obligation of the United States to redeem continental bills of the old emissions, unless discharged by some act of limitation, is very plain.

These bills were issued by the government formed under the articles of confederation before the adoption of our present Constitution, and bound that government, in express terms, to pay the holders the amount of each bill "in Spanish milled dollars, or their equivalent in gold and silver."

The sixth article of the Constitution of the United States contains the following clause: "All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederacy."

Thus the United States became bound in the most solemn manner for the payment of these bills.

There is no act of limitation known to me applicable to this case, unless it be the act under which the claim of the petitioner's intestate was presented to the Treasury Department; and of course, as the

provisions of that act were complied with, it interposes no bar. No presumption of payment is good in the case, because such presumption is repelled by proof that a demand was made under the act of Congress, the claim reported to Congress, and no legislation for its payment (and it could only be paid by legislation) ever had.

Whatever delay has occurred is imputable to the government; whatever *laches* is proved is the *laches* of the United States. Neither, in my opinion, does any other presumption adverse to the petitioner herein properly arise from the mere lapse of time. The virtual repudiation of this money of the revolution, by the failure to make any provision for its redemption, may well excuse a want of activity in urging their demands on the part of those in whose hands the bills have long lain as worthless paper; and when one is found insisting upon payment, undeterred by the indifference which has so long been the only response to all such petitions, it is no answer to his suit to say that the claim is too old.

The evidence is sufficient, in my opinion, to show that Anna Gibson was, on the 30th of March, 1794, the holder of continental bills of the old emission to the amount of $27,235. I am also satisfied from the evidence that these bills were, by her agent, John Nicholson, presented and filed in the Treasury Department and duly registered under the act of Congress of February 12, 1793. We have no certain account of them afterwards. They must now be either in the possession of the government, lost, or destroyed. The Treasury Department has not been able to produce them on the application of this court. They are probably destroyed. I will here set out in full *all* that is contained in the report of the Secretary of the Treasury made to Congress on the 23d of December, 1795, that relates to the subject-matter of this claim, as it is upon that evidence that I found my conclusions as to Mrs. Gibson owning these bills, their amount and description.

On page 172, vol. 19, Am. State Papers, tit. Claims, the Auditor says:

"I certify that, pursuant to an act of Congress passed on the 12th day of February, 1793, entitled 'An act relative to claims against the United States not barred by any act of limitation, and which have not been already adjusted,' there have been received and registered at this office one hundred and twenty-four claims presented by the persons named in the accompanying abstract, which claims, being distributed into fourteen classes, I have examined, and am of opinion that the same are inadmissible at the treasury for the reasons assigned in treating of each particular class." It will be observed that the Auditor here states explicitly that *he has examined* the claims. On page 174 of the same book we find the following remarks: "Class 7. This class is composed of three claims, presented by John Nicholson, all of which are founded on bills of credit issued by authority of the late government, commonly called bills of the *old emissions*. For these Mr. Nicholson claims payment at *par*—that is, one specie dollar for every dollar in paper. The only provision hitherto made for this species of paper is by the act of Congress of the 4th of August, 1790, entitled 'An act making provision for the debt of the United States.'

How far it may comport with justice to make provision on different principles for the particular cases now under consideration is a question proper for the decision of Congress. The money has not yet been examined or counted." On page 179 of the same book is the schedule referred to in the foregoing extracts, which is as follows:

No. of each claim.	When presented.	By whom presented.	For whom presented.	Nature or title of the account or claim.	Apparent in old emissions.	Amount in specie
150	Mar. 30, 1794	Anna Gibson.	Anna Gibson.	Continental bills of old emission.	$27,235	.....

This evidence, as already stated, is sufficient, in my opinion, to show that Mrs. Gibson was the holder of the bills, and what was their amount and description. It is true that the Auditor remarks in one place that the bills have not been examined or counted; but he intimates no doubt either as to their amount or genuineness as set forth in his schedule. He rejects them, not for any reason of that kind, but because no provision for their payment has been made by Congress. He must by some satisfactory process have made himself sufficiently acquainted with their contents to give a description of them in his report both as to general character and amount. The single statement that the bills have not been examined or counted cannot overrule the entire context of the report, nor deprive the petitioner of the benefit of the facts therein stated. Nor could a declaration of that kind, made by the officer in his report to Congress, qualify or impair a recorded description of the claim previously made when the then claimant was present. If any question was to be made as to the amount or quality of the bills presented, it should have been made at the time of presentation in the presence of the other party.

I hold the fair construction of the Auditor's report, all parts of it being considered together, to be, that he had not critically examined the continental bills presented by Mrs. Gibson, so as to scrutinize them closely, but that *prima facie* they were in amount and character as specified in the report and schedule. Upon that construction the burden of proof is upon the United States to show some answer to this *prima facie* case, some defect in the genuineness or amount of the bills. No such proof is offered. In saying that the evidence above given is sufficient to establish certain facts, I mean also to say that it is *legal evidence*.

Public documents are *prima facie*, if not conclusive evidence of the facts therein stated. (1st Greenleaf on Ev., p. 567, section 491.)

Whatever the action of the political departments of the government, to which questions of state policy properly pertain, may have been, or may hereafter be, as to repudiating, ignoring, or redeeming continental money of the kind here in question, I am not prepared to declare judicially that it does not remain in law a valid and subsisting debt against the United States; and am therefore constrained to dissent from the judgment of the court herein.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 262.

RICHARD IRVIN, TRUSTEE OF THE PRESIDENT, DIRECTORS, AND COMPANY OF THE MECHANICS' BANK, NEW YORK.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT of CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

RICHARD IRVIN, TRUSTEE OF THE PRESIDENT, DIRECTORS, AND COMPANY OF THE MECHANICS' BANK, NEW YORK, *vs.* THE UNITED STATES.

1. The petition of the claimant and amendment.
2. Depositions filed by the claimant transmitted to the House of Representatives.
3. Other documentary evidence used in the case transmitted to the House of Representatives.
4. The claimant's briefs.
5. United States solicitor's briefs.
6. Opinion of Judge Scarburgh, adverse to the claim.
7. Opinion of Judge Loring, concurring in the result.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

RICHARD IRVIN, Trustee, *vs.* THE UNITED STATES.

To the honorable Court of Claims:

The petition of Richard Irvin, trustee of the president, directors, and company of the late Mechanics' Bank, of the city of New York, respectfully represents that the United States of America are justly indebted unto your petitioner for money had and received of the late Mechanics' Bank, in manner as follows:

That by an act approved March 24, 1814, 3d Statutes at Large, 111, the President of the United States was authorized to borrow, for the use of the United States, $25,000,000; and by the same act the Secretary of the Treasury was authorized to cause certificates of stock to be prepared, signed by the Register of the Treasury, and issued or sold for the $25,000,000, or any part thereof; and the said Secretary, acting under authority of the President of the United States, did, on the 4th day of April, 1814, give public notice that proposals would be received until the 2d day of May then next, from any person or persons, body or bodies corporate, for a loan to the United States, on account of the said loan of $25,000,000, of the sum of $10,000,000, or any part thereof, not less than $25,000, payable in instalments of one-fourth part each on the 25th days of May, June, July, and August following. In the aforesaid notice of April 4 the Secretary promised that "if proposals differing in terms from one another should be accepted, the option will be allowed to any person whose proposals may be accepted of taking the terms allowed to any other person whose proposals may be accepted."

Your petitioner further shows that the Mechanics' Bank, through its then cashier, Whitehead Fish, esq., proposed to loan to the United States, for account of said bank and other persons, the sum of $250,000, as a part of the before-mentioned loan of $25,000,000; that is to say, the said bank proposed to loan, on its own account, the sum of $153,800, and its proposal was accepted on the 2d day of May, 1814; and the said bank did thereupon loan and pay over to the credit of the Treasurer of the United States, for the use of the United States, on the 26th day of May, 1814, $38,450, and on the 29th day of June $115,350; and the said several sums of money were paid in the lawful money of the United States, or in funds of equal value, on condition of receiving therefor, from the United States, public stock, authorized by the act of March 24, 1814, at the rate of $100 of such stock for every $88 of the money so loaned and paid to the Treasurer of the United States; and on the further condition, in the public notice of April 4, as construed in a letter of the Treasury Department, dated May 2, 1814, addressed to Jacob Barker, as follows: "And the United States engage, if any part of the sum of $25,000,000, authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same term shall be extended to the persons who may then hold the stock, or any part of

it, issued for the present loan of $10,000,000." And the United States issued public stocks to the said bank, for the aforesaid loan of $153,800, at the rate of $100 of stock for every $88 loaned by said bank.

Your petitioner further shows that on the 25th day of July, 1814, the Secretary of the Treasury, by public notice, invited proposals for a loan of $6,000,000, part of the loan authorized by the act of March 24 aforesaid; and on the 31st day of August, 1814, proposals were accepted by the Secretary of the Treasury for a portion of the same loan at the rate of $100 of said public stock for every $80 of the money loaned, payments to be made, one-fourth part each, on the 10th days of September, October, November, and December, *in the currency or bank notes* of the banks of Baltimore and the District of Columbia *at par;* and it is believed that for every $80 of such currency the United States issued $100 of the public stock authorized by the aforesaid act of March 24, 1814.

Your petitioner further shows that he is informed and believes that in September, October, November and December, when those payments were made, the banks of Baltimore and Washington were not redeeming their notes with specie, and the value of their notes was depreciated, so that $100 of such currency, on the 10th day of September, was worth but $90; on the 10th day of October but $88; on the 10th day of November but $80, and on the 10th day of December but $76, in the lawful money of the United States. And it was in reference to the condition in the public notice of April 4, 1814, inviting proposals, that the loan of $153,800 was made by the Mechanics' Bank on the 2d of May, 1814; and the money was paid by that bank to the Treasurer of the United States in the lawful money of the United States, or its equivalent in value. And the United States having borrowed of other persons upon terms more favorable to the lenders, the Mechanics' Bank became entitled to have the benefit of the same terms extended to that bank, and to have its loan of $153,800 placed upon a par with the loan of August 31 aforesaid; and to receive supplemental stock to an amount equal to the difference in value between $88 in lawful money of the United States, loaned by said bank, and $80 in the bank notes of the banks of Baltimore and Washington.

Your petitioner further shows that on the 22d day of October, 1814, the Hon. Richard Rush, Attorney General, officially advised the Secretary of the Treasury "that the condition stated in the Secretary's letter [of April 4, 1814,] attached as soon as the second loan was made" * * and "that the owners of the previous stock * * were * * entitled to the additional stock for the difference between the price of the first and the second loans." On the 19th and 30th days of November, 1814, the Treasury Department directed that additional stock should "be issued to the subscribers, or those claiming under them, to the loan of $10,000,000, of the 21 May, 1814," "conformably to the opinion of the Attorney General and to the said notification." The instructions of November 30 directed *an issue* of additional stock to the holders of the certificates of the loan of May 2 to the extent of *ten per cent.* on the amount of said loan; ten per cent. being supposed to be equal to the difference between $88 paid

for $100 of said stock for the loan of May 2, and $80 paid for $100 of the same stock for the loan of August 31

When the instructions of the 30th November were given, it was uncertain at what price further loans might thereafter be loaned to the United States, and no allowance could then be made in reference to the price of future loans, and no allowance was made for the depreciated value of the currency in which the instalments of the loan of August 31 had been or were to be paid. On the 22d day of November, 1814, the Secretary of the Treasury, in instructions addressed to the Comptroller, said: "It is only necessary to add that all the subscribers to the ten million loan are placed on the same footing with respect to the instalments actually paid; * * that it is not deemed proper to insist upon a release before the supplemental stock is delivered. In this last respect the government will act upon its rights, without claiming any concession from the creditors which might hereafter be considered a sacrifice on their part." And again, as follows: "Pursuing the principle that the construction given to the contract by the Attorney General is to be carried into effect, without impairing the rights or embarrassing the remedies of the creditors, I mean that the supplemental stock shall issue in such form and manner as will, on the one hand, avoid any appearance of acknowledging at the treasury that the contracts remain open, and, on the other hand, leave the creditors every proper facility to establish hereafter the identity of the supplemental stock, and its connexion with the ten million loan."

The Attorney General, in his opinion of October 22, 1814, advised that the condition in the public notice inviting proposals for subscriptions to the loan of $25,000,000 "attached as soon as the second loan was made; that, on the happening of that event, it no longer remained open and executory, subject to all possible variations in price which might mark subsequent loans until the whole $25,000,000 should be exhausted."

The Treasury Department adopted such construction, and, to carry it into effect, ordered an immediate issue of supplemental stock to the holders of the certificates of the loan of May 2, equal to ten per cent., when, as yet, it could not be known what possible variations in price might mark subsequent loans, or the value of the currency in which subsequent loans should be made and accepted.

The Comptroller of the Treasury communicated the decision of his department in reference to the condition of the loan, and the effect of the same upon the rights of holders of the public stocks, by letter, dated November 24, 1814, as follows: "That everything relating to that contract, so far as respected the stock in existence, was deemed at the treasury to be settled and closed. There is nothing in this that can have a tendency to impair the rights or embarrass the remedies of the public creditors under the $10,000,000 loan for further issues of supplemental stock. No exaction is made from them of any release whatever of their rights or claims in this respect. Their rights will remain with themselves, and their remedies with Congress."

Your petitioner further shows that the condition in the notice of April 4, aforesaid, attached as soon as the second loan was made, and

that it continued open and applied to subsequent loans, if any were made, until the whole sum of $25,000,000 was borrowed; and that the condition also applied to the value of the currency in which the second loan was made, and payments therefor accepted by the United States. At the time the loan was made by the Mechanics' Bank, *and until the Court of Claims was established*, the parties who loaned the money had no legal tribunal or court in which to assert their rights or appeal for redress, and they were necessitated to accept of such a settlement and receive such an amount of public stock and supplemental stock as the Treasury Department saw fit to award to them, although the ten per cent. supplemental stock awarded was much less than they were entitled to under the terms and conditions of the loan of May 2, aforesaid.

Your petitioner further shows that the Mechanics' Bank continued to hold the certificates of the public stock of the loan of May 2, 1814, until the 10th day of September, 1814, when the said bank sold $8,800, and the remainder, or one hundred and forty-five thousand dollars, until April 18, 1815. That various efforts have been made by parties interested, and particularly by Jacob Barker, to have an allowance, accounting and settlement made, so as to place the persons who made the loan of May 2 on a par with the persons who made the loan of August 31, 1814; but no allowance has been made by the Treasury Department for the difference between the specie value of the money loaned by the persons who made the loan of May 2, and the specie value of the bank notes or currency loaned by the persons who made the loan of August 31, 1814; and the United States have not, on their part, kept and performed the conditions of the contract; but the said contract of May 2 remains open, and the conditions of the same unexecuted. And the United States, having omitted to reckon, account, and settle with the Mechanics' Bank, according to contract, for the money loaned in 1814, are, in all good conscience, now bound to account and settle with the said bank, according to the contract of May 2, 1814, and the legal rights of the late Mechanics' Bank under said contract.

Your petitioner further says that on the 31st day of August, when the second loan was made and accepted, at the rate of $100 of public stock for $80 in bank notes, irredeemable in specie, the condition of the contract of the loan of May 2 was such as to entitle the Mechanics' Bank to as much public stock of the loan authorized by the act of March 24, 1814, as would have placed the said bank upon a footing and par with the persons who made the loan of the 31st August, 1814; and in order to do so, the value of the $153,800 loaned by the Mechanics' Bank, in lawful money of the United States, or its equivalent, should have been ascertained in the currency or bank notes of the banks of Baltimore and Washington, at the actual value of said notes, in such lawful currency, on the before-mentioned 10th days of September, October, November, and December, respectively; and there should have been issued to the Mechanics' Bank public stocks, at the rate of $100 of public stock for every $80 of the par value of the said bank notes. For example:

$38,450	on the 10th day of September, 1814, was equal in value to ..... in said bank notes.	$12,722 22
38,450	on the 10th day of October, 1814, was equal in value to	43,693 18
38,450	on the 10th day of November, 1814, was equal in value to	48,062 50
38,450	on the 10th day of December, 1814, was equal in value to	50,592 10
153,800	in lawful money was equal in value to	185,070 00

at the nominal value of said notes; which sum of $185,070 would have purchased of the said public stocks, at the rate of $100 of public stock for every $80 in such bank notes, to the amount of $231,337 50; and your petitioner says there is now due and owing by the United States to the Mechanics' Bank, or to your petitioner, as trustee, a sum of money equal to the difference between $231,337 50, which should have been issued in public stocks for the loan made by said bank, and $174,772 72, the amount of public stock which was issued to that bank in settlement of the loan of $153,800 aforesaid; which difference amounts to $56,564 88, with interest on the same from the time the money was loaned in 1814.

Your petitioner further shows that on or about the 31st day of December, 1854, the charter of the Mechanics' Bank expired, and its assets, credits, properties and effects were placed in the hands of Richard Irvin, Robert Kelly and Francis W. Edmonds, in trust, as trustees for all parties and persons who then were or thereafter might become interested in the same. That Robert Kelly has since deceased, and said Edmonds has ceased to act as trustee. That no part of the money now claimed by your petitioner has been at any time received by the Mechanics' Bank or by said trustees, and the claim for the same has not been alienated by assignment or operation of law; but the said several sums of money, for money loaned to the United States in 1814, with interest thereon, are now due and owing unto your petitioner, as trustee of the late Mechanics' Bank.

Wherefore your petitioner, relying upon the justice of this cause, and the statutes made and provided, humbly prays this honorable court to take his cause into consideration, and grant such a judgment and other relief as in the judgment of this honorable court he may be legally entitled to, in order that the money due and owing unto the Mechanics' Bank, as aforesaid, may be paid to your petitioner, as trustee, with interest on the same from the date when the money was lent to the date when the same shall be paid, together with his costs expended in this suit

RICHARD IRVIN, *Trustee.*

STATE OF NEW YORK, } ss:
City and County of New York, }

Gideon De Angelis, cashier, being sworn, says he has read the foregoing, and the facts stated in the petition are true, to the best of his knowledge and belief.

G. DE ANGELIS.

Sworn to before me this 28th day of August, 1856.

GEORGE W. MORELL,
Commissioner Court of Claims.

CHARLES E. SHERMAN,
JOHN ELY,
Attorneys for Petitioner.

RICHARD IRVIN *vs.* THE UNITED STATES.

Amendment to petition, to be inserted on page 3, *after the word "Washington," as follows:*

Your petitioner further shows that he is informed and believes that, in February, 1815, the Secretary of the Treasury borrowed of the Farmer's Bank of Annapolis, Maryland, a part of the sum of $25,000,000 authorized to be borrowed by the act of March 24, 1814, at the rate of $85 in depreciated bank notes at par for $100 in public stock of the United States, the same being part of the $25,000,000 loan; and the said bank notes, so loaned by the Farmers' Bank of Annapolis and borrowed by the Secretary of the Treasury, were, at the time they were so borrowed and accepted, 24 per cent. less in value than the lawful money of the United States.

Your petitioner further shows that the said Mechanics' Bank became entitled to have the benefit of the same terms, and to have its loan of $153,800 placed upon a par with the loan made by the Bank of Annapolis, and to receive supplemental stock to an amount equal to the difference in value between $88 in lawful money of the United States and $85 in depreciated bank notes of the value of 76 cents to the dollar, and that there is now due and owing by the United States to the said Mechanics' Bank, or to your petitioner, as trustee, the sum of $45,830 49, for money loaned in May and June, 1814, with interest on the same from the time it was loaned. Or, otherwise, there is now due and owing by the United States to the Mechanics' Bank, or to your petitioner as trustee, an amount equal to the difference in value between $88 in lawful money and $80 in depreciated bank notes of the value of 80 cents to the dollar, which difference amounts to $48,062 50, with interest at six per cent. from the 10th day of July, 1814. All which is due, owing and unpaid, to the great injury and damage of

the stockholders of the late Mechanics' Bank, for whom your petitioner is trustee.

RICHARD IRVIN, *Trustee.*
By his attorney, JOHN ELY.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Gideon De Angelis, cashier, being sworn, says he has read the foregoing, and that the facts there stated are true, to the best of his knowledge and belief.

G. DE ANGELIS, *Cashier.*

Subscribed and sworn this 15th day of May, 1858, before me.
GEO. W. MORELL,
Commissioner Court of Claims.

COURT OF CLAIMS.

RICHARD IRVIN, Trustee, *vs.* THE UNITED STATES.

Notice under Rule XI.

Please to take notice that I propose to take depositions in the above-entitled cause before George W. Morell, commissioner, or some other commissioner of the city of New York, appointed by the Court of Claims, and to examine as witnesses William Sharp, junior, and ——— ———, and any other persons of New York, on the 9th day of October next, at 3½ o'clock in the afternoon, at the office of the said commissioner, No. 44 Wall street; and that said witnesses will be examined on the interrogatories hereunto annexed.

WASHINGTON, *September* 20, 1856.

JOHN ELY,
Attorney for Petitioner.

M. BLAIR, Esq.,
United States Solicitor Court of Claims.

I acknowledge service of the above notice, and waive time.

M. BLAIR,
United States Solicitor.

WASHINGTON, *September* 29, 1856.

Interrogatories to be administered to William Sharp, junior, and ——— ———, and any other persons of New York, witnesses to be produced, sworn, and examined before George W. Morell, commissioner, or some other commissioner for the city of New York, appointed by the Court of Claims, in a certain cause now pending in the Court of Claims on the petition of Richard Irvin, trustee:

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry? Are you related, and in what degree, to the claimant?

Second interrogatory. Please to answer any interrogatories that may be propounded to you by the United States solicitor of the Court of Claims, or by the attorney for the petitioner in this cause, which may relate to any matter or thing stated in the petition hereunto annexed.

Lastly. If you know of any other matter relative to the claim in question state it fully and at large, as if you were particularly interrogated thereunto.

JOHN ELY,
Attorney for Petitioner.

OFFICE OF THE CHIEF CLERK COURT OF CLAIMS,
Washington, September 29, 1856.

I hereby certify that the foregoing are true copies of the original notice and interrogatories filed in this office by the claimant's counsel and of the entry of the United States solicitor thereon.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Washington, on the day and year last above written.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS.

RICHARD IRVIN, Trustee, *vs.* THE UNITED STATES.

To the honorable Court of Claims:

The petition of Richard Irvin, trustee of the president, directors, and company of the late Mechanics' Bank, of the city of New York, respectfully represents that the United States of America are justly indebted unto your petitioner for money had and received of the late Mechanics' Bank, in manner as follows:

That by an act approved March 24, 1814, 3d Statutes at Large, 111, the President of the United States was authorized to borrow, for the use of the United States, twenty-five millions of dollars; and by the same act the Secretary of the Treasury was authorized to cause certificates of stock to be prepared, signed by the Register of the Treasury, and issued or sold for the twenty-five millions of dollars, or any part thereof; and the said Secretary, acting under authority of the President of the United States, did, on the 4th day of April, 1814, give public notice that proposals would be received until the 2d day of May then next, from any person or persons, body or bodies corporate, for a loan to the United States, on account of the said loan of $25,000,000, of the sum of $10,000,000, or any part thereof, not less

than $25,000, payable in instalments of one-fourth part each on the 25th days of May, June, July, and August following. In the aforesaid notice of April 4 the Secretary promised that "if proposals differing in terms from one another should be accepted, the option will be allowed to any person whose proposals may be accepted of taking the terms allowed to any other person whose proposals may be accepted."

Your petitioner further shows that the Mechanics' Bank, through its then cashier, Whitehead Fish, esq., proposed to loan to the United States, for account of said bank and other persons, the sum of $250,000, as a part of the before-mentioned loan of $25,000,000; that is to say, the said bank proposed to loan, on its own account, the sum of $153,800, and its proposal was accepted on the 2d day of May, 1814; and the said bank did thereupon loan and pay over to the credit of the Treasurer of the United States, for the use of the United States, on the 26th day of May, 1814, $38,450, and on the 29th day of June, $115,350; and the said several sums of money were paid in the lawful money of the United States, or in funds of equal value, on condition of receiving therefor, from the United States, public stock, authorized by the act of March 24, 1814, at the rate of $100 of such stock for every $88 of the money so loaned and paid to the Treasurer of the United States; and on the further condition in the public notice of April 4, as construed in a letter of the Treasury Department. dated May 2, 1814, addressed to Jacob Barker, as follows: "And the United States engage, if any part of the sum of $25,000,000, authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same term shall be extended to the persons who may then hold the stock, or any part of it, issued for the present loan of $10,000,000." And the United States issued public stocks to the said bank, for the aforesaid loan of $153,800, at the rate of $100 of stock for every $88 loaned by said bank.

Your petitioner further shows that on the 25th day of July, 1814, the Secretary of the Treasury, by public notice, invited proposals for a loan of $6,000,000, part of the loan authorized by the act of March 24 aforesaid; and on the 31st day of August, 1814, proposals were accepted by the Secretary of the Treasury for a portion of the same loan at the rate of $100 of said public stock for every $80 of the money loaned, payments to be made, one-fourth part each, on the 10th days of September, October, November, and December, *in the currency or bank notes* of the banks of Baltimore and the District of Columbia *at par;* and it is believed that for every $80 of such currency the United States issued $100 of the public stock authorized by the aforesaid act of March 24, 1814.

Your petitioner further shows that he is informed and believes that in September, October, November, and December, when those payments were made, the banks of Baltimore and Washington were not redeeming their notes with specie, and the value of their notes was depreciated, so that $100 of such currency, on the 10th day of September, was worth but $90; on the 10th day of October but $88; on the 10th day of November but $80, and on the 10th day of December but $76, in the lawful money

of the United States. And it was in reference to the condition in the public notice of April 4, 1814, inviting proposals, that the loan of $153,800 was made by the Mechanics' Bank on the 2d of May, 1814, and the money was paid by that bank to the treasurer of the United States in the lawful money of the United States, or its equivalent in value. And the United States having borrowed of other persons upon terms more favorable to the lenders, the Mechanics' Bank became entitled to have the benefit of the same terms extended to that bank, and to have its loan of $153,800 placed upon a par with the loan of August 31 aforesaid; and to receive supplemental stock to an amount equal to the difference in value between $88 in lawful money of the United States, loaned by said bank, and $80 in the bank notes of the banks of Baltimore and Washington.

Your petitioner further shows that on the 22d day of October, 1814, the honorable Richard Rush, Attorney General, officially advised the Secretary of the Treasury "that the condition stated in the Secretary's letter [of April 4, 1814,] attached as soon as the second loan was made," * * and "that the owners of the previous stock * * were * * entitled to the additional stock for the difference between the price of the first and the second loans." . On the 19th and the 30th days of November, 1814, the Treasury Department directed that additional stock should "be issued to the subscribers, or those claiming under them, to the loan of $10,000,000, of the 2d May, 1814," "conformably to the opinion of the Attorney General and to the said notification." The instructions of November 30 directed *an issue* of additional stock to the holders of the certificates of the loan of May 2 to the extent of *ten per cent.* on the amount of said loan; ten per cent. being supposed to be equal to the difference between $88 paid for $100 of said stock for the loan of May 2, and $80 paid for $100 of the same stock for the loan of August 31.

When the instructions of the 30th November were given, it was uncertain at what price further loans might thereafter be loaned to the United States, and no allowance could then be made in reference to the price of future loans, and no allowance was made for the depreciated value of the currency in which the instalments of the loan of August 31 had been or were to be paid. On the 22d day of November, 1814, the Secretary of the Treasury, in instructions addressed to Comptroller, said: "It is only necessary to add that all the subscribers to the ten million loan are placed on the same footing with respect to the instalments actually paid; * * that it is not deemed proper to insist upon a release before the supplemental stock is delivered. In this last respect the government will act upon its rights, without claiming any concession from the creditors which might hereafter be considered a sacrifice on their part." And again, as follows: "Pursuing the principle that the construction given to the contract by the Attorney General is to be carried into effect, without impairing the rights or embarrassing the remedies of the creditors, I mean that the supplemental stock shall issue in such form and manner as will, on the one hand, avoid any appearance of acknowledging at the treasury that the contracts remain open, and, on the other hand, leave the

creditors every proper facility to establish hereafter the identity of the supplemental stock, and its connexion with the ten million loan."

The Attorney General, in his opinion of October 22, 1814, advised that the condition in the public notice inviting proposals for subscriptions to the loan of $25,000,000 "attached as soon as the second loan was made; that, on the happening of that event, it no longer remained open and executory, subject to all possible variations in price which might mark subsequent loans until the whole $25,000,000 should be exhausted."

The Treasury Department adopted such construction, and, to carry it into effect, ordered an immediate issue of supplemental stock to the holders of the certificates of the loan of May 2, equal to ten per cent., when, as yet, it could not be known what possible variations in price might mark subsequent loans, or the value of the currency in which subsequent loans should be made and accepted.

The Comptroller of the Treasury communicated the decision of his department, in reference to the condition of the loan, and the effect of the same upon the rights of holders of the public stocks, by letter, dated November 24, 1814, as follows: "That everything relating to that contract, so far as respected the stock in existence, was deemed at the treasury to be settled and closed. There is nothing in this that can have a tendency to impair the rights or embarrass the remedies of the public creditors under the $10,000,000 loan for further issues of supplemental stock. No exaction is made from them of any release whatever of their rights or claims in this respect. Their rights will remain with themselves, and their remedies with Congress."

Your petitioner further shows that the condition in the notice of April 4, aforesaid, attached as soon as the second loan was made, and that it continued open and applied to subsequent loans, if any were made, until the whole sum of $25,000,000 was borrowed; and that the condition also applied to the value of the currency in which the second loan was made, and payments therefor accepted by the United States. At the time the loan was made by the Mechanics' Bank, *and until the Court of Claims was established*, the parties who loaned the money had no legal tribunal or court in which to assert their rights or appeal for redress, and they were necessitated to accept of such a settlement and receive such an amount of public stock and supplemental stock as the Treasury Department saw fit to award to them, although the ten per cent. supplemental stock awarded was much less than they were entitled to under the terms and conditions of the loan of May 2 aforesaid

Your petitioner further shows that the Mechanics' Bank continued to hold the certificates of the public stock of the loan of May 2, 1814, until the 10th day of September, 1814, when the said bank sold $8,800, and the remainder, or one hundred and forty-five thousand dollars, until April 18, 1815. That various efforts have been made by parties interested, and particularly by Jacob Barker, to have an allowance, accounting and settlement made, so as to place the persons who made the loan of May 2 on a par with the persons who made the loan of August 31, 1814; but no allowance has been made by the Treasury Department for the difference between the specie value of

the money loaned by the persons who made the loan of May 2, and the specie value of the bank notes or currency loaned by the persons who made the loan of August 31, 1814; and the United States have not, on their part, kept and performed the conditions of the contract; but the said contract of May 2 remains open, and the conditions of the same unexecuted. And the United States, having omitted to reckon, account, and settle with the Mechanics' Bank, according to contract, for the money loaned in 1814, are, in all good conscience, now bound to account and settle with the said bank, according to the contract of May 2, 1814, and the legal rights of the late Mechanics' Bank under said contract.

Your petitioner further says that on the 31st day of August, when the second loan was made and accepted, at the rate of $100 of public stock for $80 in bank notes, irredeemable in specie, the condition of the contract of the loan of May 2 was such as to entitle the Mechanics' Bank to as much public stock of the loan authorized by the act of March 24, 1814, as would have placed the said bank upon a footing and par with the persons who made the loan of August 31, 1814; and in order to do so, the value of the $153,800, loaned by the Mechanics' Bank, in lawful money of the United States, or its equivalent, should have been ascertained in the currency or bank notes of the banks of Baltimore and Washington, at the actual value of said notes, in such lawful currency, on the before-mentioned 10th days of September, October, November, and December, respectively; and there should have been issued to the Mechanics' Bank public stocks, at the rate of $100 of public stock for every $80 of the par value of the said bank notes. For example:

$38,450	on September 10, 1814, was equal in value to in said bank notes.	$42,722 22
38,450	on October 10, 1814, was equal in value to.....	43,693 18
38,450	on November 18, 1814, was equal in value to...	48,062 50
38,450	on December 10, 1814, was equal in value to...	50,592 10
153,800	in lawful money was equal in value to	185,070 00

at the nominal value of said notes; which sum of $185,070 would have purchased of the said public stocks, at the rate of $100 of public stock for every $80 in such bank notes, to the amount of $231,337 50; and your petitioner says there is now due and owing by the United States to the Mechanics' Bank, or to your petitioner, as trustee, a sum of money equal to the difference between $231,337 50, which should have been issued in public stocks for the loan made by said bank, and $174,772 72, the amount of public stock which was issued to that bank in settlement of the loan of $153,800 aforesaid; which difference amounts to $56,564 88, with interest on the same from the time the money was loaned in 1814.

Your petitioner further shows that on or about the 31st day of December, 1854, the charter of the Mechanics' Bank expired, and its assets, credits, properties and effects were placed in the hands of Richard Irvin, Robert Kelly, and Francis W. Edmonds, in trust, as trustees for all parties and persons who then were or thereafter might

become interested in the same. That Robert Kelly has since deceased, and said Edmonds has ceased to act as trustee. That no part of the money now claimed by your petitioner has been at any time received by the Mechanics' Bank, or by said trustees, and the claim for the same has not been alienated by assignment or operation of law; but the said several sums of money, for money loaned to the United States in 1814, with interest thereon, are now due and owing unto your petitioner as trustee of the late Mechanics' Bank.

Wherefore your petitioner, relying upon the justice of this cause and the statutes made and provided, humbly prays this honorable court to take his cause into consideration, and grant such a judgment and other relief as, in the judgment of this honorable court, he may be legally entitled to, in order that the money due and owing unto the Mechanics' Bank as aforesaid may be paid to your petitioner as trustee, with interest on the same from the date when the money was lent to the date when the same shall be paid, together with his costs expended in this suit.

RICHARD IRVIN, *Trustee.*

STATE OF NEW YORK,
City and County of New York, } *ss:*

Gideon De Angelis, cashier, being sworn, says he has read the foregoing, and the facts stated in the petition are true, to the best of his knowledge and belief.

G. DE ANGELIS.

Sworn to before me this 28th day of August, 1856.

GEORGE W. MORELL,
Commissioner Court of Claims.

CHARLES E. SHERMAN,
JOHN ELY,
Attorneys for Petitioner.

"MAY 26, 1814.

"T. T. Tucker, one instalment on J. Barker's subscription to the loan	$416,059 50
"T. T. Tucker, received of J. Barker	120,940 50
"T. T. Tucker, on Mechanics' Bank subscription, Union Bank, Char'n, Union Insurance Company, Char'n	115,000 00."

"JUNE 29, 1814.

'T. T. Tucker, treasurer, by Jacob Barker, account of loan	$225,000 00
"T. T. Tucker, ins. to loan	1,124,550 00"

EXHIBIT A.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States, defendant, this paper writing was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
Commissioner of the Court of Claims.

"*Loan to the United States.*

"DR.

"1814.—May 26.	To cash subscription.....	$38,450 00
June 29.	To cash subscription.....	115,350 00
Sept. 1.	To balance.....	153,800 00

"CR.

"1814.—Sept. 10.	By cash.....	$8,800 00
"1815.—April 18.	By cash.....	145,000 00
		153,800 00"

EXHIBIT B.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States. defendant, this paper writing was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
Commissioner of the Court of Claims.

"*Minutes of the president and directors of the Mechanics' Bank, in the city of New York.*

"At a meeting of the directors held on the 4th day of April, at Mechanic Hall, year 1810, present Jacob Sherrod, Matthew L. Davis, Naphtali Judah, George Warner, John R. Murray, Samuel St. John, Stephen Allen, Gabriel Furman, Anthony Steenbach, John Slidell, Francis Cooper, George Ireland, John D. Miller, and Jonathan Lawrence, jr.

"They proceeded to the choice of a chairman and secretary, when Jacob Sherrod was chosen to the former and Matthew L. Davis to the latter station.

"*Resolved*, That the board proceed to elect, by ballot, a president, and that no person be considered as elected unless he has at least eight votes.

"Upon a canvass of the ballots a plurality of votes were found to be in favor of John Slidell as president. He was accordingly declared duly elected.

"*Ordered*, That the board proceed to ballot for a cashier, upon a canvass of which Whitehead Fish was found to be duly elected cashier."

EXHIBIT C.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States, defendant, this paper writing was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
Commissioner of the Court of Claims.

"At a meeting of the board of directors of the Mechanics' Bank, held at the banking house on Wednesday, January 13, 1819, present Jacob Lorillard, president; Gabriel Furman, H. C. DeRham, Andrew Morris, Jacob Sherred, Francis Cooper, Stephen Allen, Anthony Steenback, Divie Bethune.

"Mr. Sherred reported that he was authorized to offer the resignation of Mr. Whitehead Fish as cashier of this bank; whereupon,

"*Resolved*, That the resignation of Mr. Whitehead Fish be accepted, and that the board do now proceed to the election of a cashier in his place.

"The board thereupon proceeded to ballot, and Mr. John Fleming was unanimously elected cashier.

"*Resolved*, That Divie Bethune, Jacob Sherred, and Jacob Lorillard be a committee to receive from Mr. Fish, or any person appointed by him, all papers, property, or other documents belonging to the Mechanics' Bank, and to deliver them over to the charge of Mr. Fleming.

"Adjourned."

EXHIBIT D.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States, defendant, this paper writing was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
Commissioner of the Court of Claims.

$153,800	in lawful money will purchase public stocks, at the rate of 88 dollars in money for $100 in stocks, to the amount of	$174,772 72
$153,800	in lawful money will purchase public stocks, at the rate of 80 dollars in money for $100 in stocks, to the amount of	$192,250 00
$38,450	will purchase bank notes, at the rate of 90 cents to the dollar, to the amount of	$42,722 22
38,450	at 88 cents to the dollar to the amount of	43,693 18
38,450	at 80 cents to the dollar to the amount of	48,062 50
38,450	at 76 cents to the dollar to the amount of	50,592 10
$153,800,	at the rates above mentioned, will purchase in bank notes.	$185,070 00
$185,070	in bank notes will purchase in public stocks, at the rate of 80 dollars in notes for $100 in stocks, to the amount of	$231,337 50

EXHIBIT E.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States, defendants, this paper writing was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
Commissioner of the Court of Claims.

EXHIBIT F.

This indenture, made and entered into this twenty-seventh day of December, one thousand eight hundred and fifty-four, between the President, Directors, and Company of the Mechanics' Bank in the city of New York, parties of the first part, and Francis W. Edmonds, Robert Kelly, and Richard Irvin, all of the said city of New York, parties of the second part.

Whereas the said parties of the first part are a corporation incorporated under the laws of the State of New York, by a charter which will expire on the first day of January, one thousand eight hundred and fifty-five;

And whereas the stockholders of said corporation have, with but a small exception, associated themselves together in an association under the laws of the State of New York, to authorize the business of banking by the name of "The Mechanics' Bank of the city of New York,"

to commence business on the second day of January, one thousand eight hundred and fifty-five;

And whereas said parties hereto of the first part and the directors named in said articles of association have agreed mutually upon the sale and transfer by the former to the latter, at an appraised and stipulated value, and under certain conditions and limitations, of all its estate, property, assets and effects, as hereinafter mentioned;

And whereas the charter of the said parties hereto of the first part will expire before the commencement of the business transactions of said association, and by the laws of this State the directors of said party of the first part in office at the expiration of its charter will be the legitimate trustees to wind up its affairs and dispose of its property;

And whereas by the resignation of all said directors except the parties hereto of the second part, they will be, and remain such trustees;

And whereas the said parties hereto of the first part have assets fully sufficient to pay all their debts and to return to their stockholders all their capital and a large surplus:

Now this indenture witnesses that said parties of the first part, to prevent losses and expenses to the stockholders of the said parties hereto of the first part, and delay to its creditors, bill-holders, and other persons having claims against the same, and in furtherance of the said provision of the law and the fulfilment of their said contract, have assigned, transferred, and set over, and hereby do assign, transfer, and set over unto the said parties hereto of the second part, (the banking house and premises of said parties of the first part in Wall street, in the city of New York, being embraced in another conveyance,) all the bills receivable and other evidences of debt owing to said parties of the first part, for loans or discounts and all securities held as collateral thereto; and also all claims and demands for any over drafts or other indebtedness; also all cash items, checks, bills of banks, banking associations, or individual bankers; all amounts due or owing from any bank, banking association, or individual banker, and all securities for any such debts, and all other claims whatever, whether in judgment, decree, suit, or otherwise; also all stocks, bonds, and amounts of public debt, whether of the United States of America, or of any State, corporate, political, or public body whatever, with all interest in arrear or accruing upon or in respect of all or any of the preceding enumerated items; all bank and office furniture, and all other, the property, assets and effects of the said parties hereto of the first part, which would by virtue of law pass to their legal trustees on the expiration of their charter, including therein all their specie, bullion, gold, silver, and copper coin, and all their circulating notes in the possession or control of the said parties of the first part, but excepting and reserving from the operation of this instrument the banking house and lot of the said parties of the first part in Wall street, in the city of New York, as before mentioned, and any real estate they may have taken or purchased in payment of debts according to law.

To have and to hold the same, and every part and parcel thereof, to the said parties hereto of the second part, as joint tenants and not as

tenants in common, as trustees of the said parties of the first part under the statute; with power, nevertheless, to the said parties of the second part to grant, bargain, and sell or transfer all the said assigned premises, and all and every part thereof, to the said association, so formed as aforesaid, by the name of the Mechanics' Bank of the city of New York, so soon as it shall be organized and have elected a president, upon said association executing in due form of law and delivering to said trustees the obligation of said association to comply with and effectually fulfil the following stipulations, conditions, and provisions, viz:

First. To recognize as valid and subsisting obligations, as well against the said association as against the said parties of the first part, and against all the said assets, property, estate, and effects, the circulating notes made by said parties hereto of the first part until the same shall be cancelled as hereinafter expressed, and to promise to pay and provide for the ultimate redemption, payment, and cancelling of all said circulating notes.

Second. To pay on demand to all stockholders of said parties of the first part, who have not become shareholders in said association, the par value of their stock, and also the sum of thirty-eight $\frac{8}{9}$ per cent. thereon, or such other sum as said stock may prove to be worth.

Third. To admit and credit to the stockholders of the said parties of the first part (other than those provided for as in the preceding section expressed) as a credit and payment upon the shares by them respectively subscribed in the stock of the said association, the par amount of their stock in the said parties of the first part, and in addition thereto the amount of thirty-eight $\frac{8}{9}$ per cent. on the par value of his stock, upon his cancelling and relinquishing all further claim for, upon, or on account of his stock in said corporation, parties hereto of the first part.

Fourth. To provide that said association shall, furthermore, assume and agree to credit to all and singular the depositors and dealers of the parties hereto of the first part all balances and amounts due or owing to them respectively, and the same are payable and to be paid by the said association at the same times and manner, and at the same place as the same were payable by the parties of the first part, and all payments by the said association to such depositors and dealers shall apply upon such credited balances and amounts in priority and satisfaction thereof, in preference to amounts subsequently credited to them by the said association, so that the parties hereto of the first part shall be discharged thereof in the course of business as soon as practicable in manner aforesaid.

Fifth. To provide that the said association shall also assume and agree to satisfy (in like manner as provided in the last article as to sums owing to depositors and dealers) all sums and amounts due or owing by the parties hereto of the first part to any person or persons whatever, and also to satisfy in like manner all sums and amounts due or owing by the parties hereto of the first part to other banks or banking associations, or individual bankers, in regard to whom the same application of payments and debts shall take place.

Last. An inventory and statement, in duplicate, shall be made out

with all convenient speed of all the property and assets existing and transferred, as the same shall be, immediately before the expiration of the charter of the parties hereto of the first part, and also of the amounts owing by the parties hereto of the first part at the same date, and of all then outstanding bank notes; which inventory shall be signed by the president of the said association and the cashier of the parties thereto of the first part; one copy to be kept by the said association, and the other by the said cashier for the benefit of all parties interested therein.

It being also to be expressed and agreed in said instrument that the books of account, vouchers, and papers, now of the said parties of the first part, shall be left in the care and charge of the said association, subject, however, to the control of the parties hereto of the second part and their successors.

And this indenture further witnesseth, that if the said parties hereto of the second part cannot effect such agreement, or one substantially the same, with said association, that then said parties of the second part shall hold all said assets and property, and also all the real estate of said parties of the first part as trustees for its stockholders and creditors according to law.

In witness whereof the parties hereto of the first part have hereunto set their corporate seal, and caused the same to be attested by their proper officers, the day and year first above written. And the said parties hereto of the second part have also hereunto set their hands and seals in evidence of their acceptance thereof.

SHEPHERD KNAPP, *Pres't.* [SEAL.]

Attest:
F. W. EDMONDS, *Cashier.*

F. W. EDMONDS. [L. S.]
ROBERT KELLY. [L. S.]
RICH'D IRVIN. [L. S.]

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-seventh day of December, A. D. 1854, before me personally came Shepherd Knapp, to me known to be the same individual who has executed the foregoing conveyance as president of the corporation known as the President, Directors & Company of the Mechanics' Bank in the city of New York, the same corporation described in and who have executed the said conveyance, and the said Shepherd Knapp being then by me duly sworn, did depose that he resides in the said city of New York; that he is the president of the said corporation; that the seal affixed to the said conveyance is the corporate seal of said corporation and was thereto affixed by order of said corporation, and that by like order he subscribed his name thereto as such president. And, also, at the same time before me came Francis W. Edmonds, Robert Kelly, and Richard Irvin, all to me known to be the same individuals described in and who have executed the said conveyance, and severally acknowledged to me that they had respectively executed the same.

THOS. S. SOMMERS, *Com'r of Deeds.*

EXHIBIT F.

At the execution of a commission for the examination of witnesses between William Irvin, trustee, claimant, and the United States, defendant, this paper writing, four half sheets, was produced and shown to William Sharp, jr., and by him deposed unto at the time of his examination before me.

GEORGE W. MORELL,
Commissioner Court of Claims.

Deposition of William Sharp, junior, a witness produced, sworn and examined the twenty-seventh and twenty-ninth days of November, in the year one thousand eight hundred and fifty-six, under and by virtue of a commission issued out of the Court of Claims in a certain cause therein depending between William Irvin, trustee, claimant, and the United States, as follows:

William Sharp, junior, of Port Richmond, county of Richmond and State of New York, aged forty years, being publicly sworn and examined on the part of the claimants, doth depose and say as follows, viz:

1. To the first interrogatory he saith: My name is William Sharp, junior; I am an accountant and bookkeeper in and for the Mechanics' Bank; I am forty years of age; I reside at Port Richmond (Staten Island) in the county of Richmond and State of New York, and have resided there for the past year. I have no interest, direct or indirect, that I am aware of, in this matter which is the subject of inquiry; I was a stockholder in the old Mechanics' Bank to the amount of two hundred and fifty dollars; I am not related in any degree to the claimant.

2. Second interrogatory.

Under this interrogatory the following are the questions put by the attorney for the petitioner and the answers thereto:

Question. How long have you been in the employ of the Mechanics' Bank?

Answer. I have been in the employ of the late Mechanics' Bank from some time in the year 1848 and continued in its employ until the charter expired on January 1, 1855, since which time I have been in the employ of the present Mechanics' Bank.

Question. Do you know Richard Irvin, and is he trustee of the late Mechanics' Bank?

Answer. I am personally acquainted with Richard Irvin; he is the only acting trustee of the late Mechanics' Bank; he was associated as trustee with Robert Kelly and Francis W. Edmonds; Mr. Kelly is dead and Mr. Edmonds has ceased to act.

Question. In what manner did Mr. Irvin become a trustee of the late Mechanics' Bank?

Answer. He was one of the directors of the late Mechanics' Bank, and the president and directors of the late Mechanics' Bank, shortly before the charter expired, made an assignment in writing whereby Richard Irvin, Robert Kelly and Francis W. Edmonds were constituted and appointed trustees, and accepted the trust and wound up th

affairs of the late Mechanics' Bank. (See exhibit F, hereto annexed, which is a copy of the assignment.)

Question. Do you know whether the late Mechanics' Bank loaned any money to the United States in the year eighteen hundred and fourteen?

Answer. By reference to the books of the late Mechanics' Bank I find they did.

Question. Do you find, on examination of the books of account of the late Mechanics' Bank, that the bank paid any money in May and June. eighteen hundred and fourteen, as a loan to the government of the United States?

Answer. I find in the deposit book that on the twenty-sixth of May, eighteen hundred and fourteen, there was placed to the credit of T. T. Tucker, treasurer, by the Mechanics' Bank, the sum of one hundred and fifteen thousand dollars, ($115,000) and on the twenty-ninth of June, eighteen hundred and fourteen, there was placed to the credit of T. T. Tucker, treasurer, by the Mechanics' Bank, the sum of one million one hundred and twenty-four thousand five hundred and fifty dollars, ($1,124,550) a statement of which I hand to the commissioner as a part of my answer to this question, which presents a true extract from the deposit book of the late Mechanics' Bank, marked exhibit A, hereto annexed. By examination of the ledger of general accounts of the late Mechanics' Bank, I find that on the twenty-sixth of May, eighteen hundred and fourteen, the bank loaned to the United States the sum of thirty-eight thousand four hundred and fifty dollars, ($38,450,) which sum is included in and makes part of the before mentioned sum of $115,000, and that on the twenty-ninth day of June, eighteen hundred and fourteen, the Mechanics' Bank loaned to the United States the sum of one hundred and fifteen thousand three hundred and fifty dollars, ($115,350,) which sum is included in and makes part of the aforesaid sum of $1,124,550. On further examination of the books of the late Mechanics' Bank, I find the bank reimbursed itself for the money so loaned by the sale of United States stock, viz: on the 10th of September, 1814, to the amount of ($8,800) eight thousand eight hundred dollars, and on the 18th of April, 1815, to the amount of one hundred and forty-five thousand dollars, ($145,000,) a statement of which I hand to the commissioner as a part of my answer to this question, which presents a true extract from the ledger of general accounts No. 1, marked exhibit B, hereto annexed.

Question. Do you know whether Mr. Whitehead Fish was the cashier of the late Mechanics' Bank in the year eighteen hundred and fourteen.

Answer. I find by the book of minutes of the president and directors of the late Mechanics' Bank, an extract of which I present as part of my answer hereto, marked exhibit C, that Whitehead Fish was elected cashier of that bank in April, eighteen hundred and ten, and on further examination of the book of minutes of the board of directors of the late Mechanics' Bank, an extract of which I present as a part of my answer to this question, market exhibit D, hereto annexed, that Whitehead Fish resigned the office of cashier to the late Mechanics' Bank, and that his resignation was accepted in January, eighteen hundred and nineteen. I was not acquainted with White-

head Fish. I have no doubt he was cashier of the Mechanics' Bank in eighteen hundred and fourteen. Since I went into the employ of the bank in 1848, he was always spoken of as the cashier from 1810 until he was superseded by Mr. Fleming, in 1819; exhibits C and D, hereto annexed, are true extracts from the book of minutes of the board of directors of the late Mechanics' Bank, which book and the ledger and the deposit book, before spoken of, are in the custody of the present Mechanics' Bank for safe keeping.

Question. Have you ascertained at what rate the loan mentioned in your previous answer was taken by the bank?

Answer. I have not found any book on record which shows at what rate the loan was made. The accounts were so kept as to show the amount of money loaned and the amount in money received upon sale of public stock.

Question. Suppose the loan to have been made at the rate of eighty-eight dollars in money for one hundred dollars in public stock, how much public stock would the Mechanics' Bank have been entitled to receive for its loan of $153,800?

Answer. The bank would have been entitled to receive for that sum in public stock, at $88 per hundred, to the amount of one hundred and seventy-four thousand seven hundred and seventy-two dollars and seventy-two cents ($174,772 72.)

Question. Suppose the loan had been made at eighty dollars in money for one hundred dollars in public stock, how much would the bank have been entitled to receive for its loan?

Answer. At the rate of eighty dollars in money for one hundred dollars in public stock the bank would have been entitled to receive public stock to the amount of one hundred and ninety-two thousand two hundred and fifty dollars ($192,250.)

Questions: Suppose you would purchase public stock at the rate of one hundred dollars of stock for eighty dollars in bank notes, and that bank notes were worth in lawful money but ninety cents on the dollar, how much of such public stock could you purchase for thirty-eight thousand four hundred and fifty dollars?

If the bank notes were worth but eighty-eight cents on the dollar, how much of such public stock could you purchase for thirty-eight thousand four hundred and fifty dollars?

If the bank notes were worth in lawful money but eighty cents on the dollar, how much of such public stock could you purchase for thirty-eight thousand four hundred and fifty dollars?

If the bank notes were worth in lawful money but seventy-six cents on the dollar, how much of such public stock could you purchase for thirty-eight thousand four hundred and fifty dollars?

Answers: Thirty-eight thousand four hundred and fifty dollars in lawful money would purchase of such bank notes, at ninety cents for the dollar, to the amount of..... $42,722 22
At 88 cents on the dollar, to the amount of..... 43,693 18
At 80 cents on the dollar, to the amount of..... 48,062 50
At 76 cents on the dollar, to the amount of..... 50,592 10

Total..... 185,070 00

So that with one hundred and fifty-three thousand eight hundred dollars ($153,800) in lawful money I could purchase one hundred and eighty-five thousand and seventy dollars in such bank notes at the rates mentioned, and that amount in such bank notes would purchase of public stock, at the rate of eighty dollars in notes for one hundred dollars of stock, public stock to the amount of two hundred and thirty-one thousand three hundred and thirty-seven dollars and fifty cents, ($231,337 50.)

In further answer to this question I present a statement marked exhibit E, hereto annexed.

To the last interrogatory he saith the charter of the late Mechanics' Bank expired on or about the 31st day of December, (1854,) eighteen hundred and fifty-four, when the assets and books of accounts passed to and remained in the hands of the trustees, and on or about the 1st of January, 1855, the new Mechanics' Bank succeeded to the business of the former, and the trustees placed their books of minutes and books of accounts in the custody of the present Mechanics' Bank for safe-keeping, where they now are; and the exhibits which I have presented to the commissioner in answer to the preceding interrogatories are true extracts from those books, with the exception of exhibits E and F.

Exhibit F is a true copy of an assignment made by Shepard Knapp as president of the late Mechanics' Bank, for the purposes therein mentioned, the original of which is in the custody of the present cashier of the Mechanics' Bank.

W. SHARP, JR.

Sworn and subscribed before me this 27th and 29th days of November, 1856.

GEO. W. MORELL,
Commissioner of Court of Claims.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On the twenty-seventh and twenty-ninth days of November, A. D. one thousand eight hundred and fifty-six, personally came William Sharp, jr., the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within commission, and also those contained in the within deposition, and written down by me, were then proposed by me to the witness; and the answers thereto were written down by me in the presence of the witness, who then subscribed the deposition in my presence.

The deposition of William Sharp, jr., taken at the request of John Ely, esq., to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of William Irvin, trustee.

The adverse party was notified, and did not attend.

In witness whereof, I have hereunto set my hand and affixed my official seal the twenty-ninth day of November, one thousand eight hundred and fifty-six.

[L. S] GEO. W MORELL,
Commissioner of Court of Claims.

IN THE COURT OF CLAIMS.

RICHARD IRVIN *vs.* THE UNITED STATES.

Testimony of Richard Smith for the claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the sixth day of October, A. D. eighteen hundred and fifty-eight, personally came Richard Smith, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did not attend, but sent the written cross-interrogatories hereunto attached.

EDMUND F. BROWN,
Commissioner of the Court of Claims.

Fees of witness: Attendance one day, at $1 50 per day, $1 50.
Commissioner's fees:

Taking testimony, 2,500 words, at 20 cents per 100.....	$5 00
For administering one oath.....	10
For attendance on witness at bank, by request.....	3 00
	8 10

The deposition of Richard Smith, taken at the request of counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Richard Irvin *vs.* The United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Answer. My name is Richard Smith; my occupation, cashier of the Bank of the Metropolis; my age is seventy-two years; my residence the past year, Washington city; I have no interest, direct or indirect,

in the claim which is the subject of inquiry; and am in no degree related to the claimant.

1st interrogatory by the counsel for the claimant. Examine the paper now shown you, marked A, which purports to be a copy from an account of moneys received by the United States "on account of the loan of six millions of dollars, per act of March 24, 1814," with the certificate of F. Bigger, Register of the Treasury, dated June 21, 1858, and say whether or no you have any knowledge of the item in these words and figures: "William Whann, Bank of Columbia, Georgetown, $25,000;" and if you have, state all you know about it?

Answer. The books of the late Bank of Columbia were sent to the Bank of the United States at Philadelphia some three years ago, and I am informed that they have been destroyed; I can only answer from recollection. In regard to the item of $25,000, above alluded to, I have no knowledge of it, unless it be the one referred to in the 2d interrogatory.—(Paper marked A, hereunto attached, E. F. B., commissioner.)

2d interrogatory. Your deposition was taken in the case pending in this court in favor of R. R. Ward, F. G. Halleck, and Jacob Little, assignees of Jacob Barker, and against the United States; and in answer to the 16th interrogatory proposed to you therein you say as follows:

"On the morning of the day when the news of the treaty of peace was received, which was some time in February, 1815, I applied to the treasury, at the request of the Farmers' Bank of Annapolis, to subscribe for United States stock, to the amount of $25,000, at 85 per cent., payable in the notes of the banks of the District of Columbia. The Secretary was not in his office; Mr. Sheldon, the acting chief clerk, received the offer, but could not give the answer in the absence of the Secretary. I called on the following day and received from Mr. Dallas the answer that I should have the stock. It was accordingly taken at that rate."

Will you now state the bills of the banks in the District of Columbia in which this $25,000 was paid; and whether or no the entry referred to in the 1st interrogatory, to wit: "William Whann, Bank of Columbia, Georgetown, $25,000," has any reference thereto? Is that the loan made by you?

Answer. The amount was placed to the credit of the Treasurer of the United States on the books of the Bank of Columbia, and the bills of that bank were paid on the checks of the treasurer. The bid was made by me for the Farmers' Bank of Annapolis, at the request of the Farmers and Mechanics' Bank of Georgetown, but whether it had any connexion with the transaction with the Bank of Columbia, or not, I cannot say.

3d interrogatory. Will you state what was the value, at the time you paid the $25,000, as compared with specie, of the bills of the banks of the District of Columbia in which the same was made? How much below par?

Answer. The bills of the banks of the District of Columbia were, at that time, from twenty-two to twenty-four per cent. below par.

4th interrogatory. Did the banks in the District of Columbia pay

specie for their bills at that time? If not, when did they suspend, and when resume?

Answer. They did not pay specie at that time. They suspended towards the last of August, 1814, immediately after the capture of Washington, and resumed in or about January, 1817, when the Bank of the United States went into operation.

Cross-interrogatories by the solicitor.

1st cross-interrogatory. Have you any written memorandum, made by yourself or by your order at the time of the transaction, to refresh your memory and enable you to state any fact in reply to the 1st direct interrogatory; and if so, what, when, and by whom made, and give a copy thereof?

Answer. I have not, for the reasons stated in my answer to the 1st direct interrogatory.

2d cross-interrogatory. Do you know that William Whann did not subscribe for $25,000 of the stock mentioned in said 1st direct interrogatory, either on his own account or on account of the Bank of Columbia; and if so, how do you know that he did not do so?

Answer. I have no knowledge or recollection on the subject, as the books are all destroyed.

3d cross-interrogatory. If you made the subscription yourself for the Farmers' Bank of Annapolis, as you stated in your former examination in Barker's case, why was not the loan entered in your name, or in that of said Farmers' Bank; and what has changed your opinion as to your being the subscriber for this loan?

Answer. I know of no reason why it was not entered in the name of the bank, and I have not changed my opinion on the subject, but still believe that the subscription then made by me was for said Farmers' Bank of Annapolis.

4th cross-interrogatory. Do you know, of your own knowledge, and, if so, how do you know, that your subscription was entered in the name of William Whann? And do you know, and, if so, how, that this stock was ever transferred by him to the Farmers' Bank; and when did the transfer take place?

Answer. I have no knowledge whatever of any such transactions.

5th cross-interrogatory. Do you know that the said $25,000 loan was in fact paid in bills of the District banks; and, if so, how do you know it; and in the bills of what banks was it paid, and by whom, and when, and where?

Answer. They were paid in notes of the Bank of Columbia, on checks of the Treasurer of the United States, as stated in my answer to the 2d direct interrogatory, as all deposits to the credit of the treasurer were generally paid in that way. I know it from my recollection of the manner in which all drafts of the treasurer were paid at that time. I was the agent for the bank of Columbia at their office in the treasury building, and made most of the payments myself, but cannot state the precise dates, it being between the 1st of April, 1811, and the 1st of March, 1817.

6th cross-interrogatory. Did the Farmers' Bank of Annapolis pay

you the amount of the loan in the bills of the District banks; and if so, when, and through whom, and where, and in the bills of what banks in particular was it paid?

Answer. The funds were deposited with us by the Farmers and Mechanics' Bank of Georgetown, but of what description of funds I cannot now recollect.

7th cross-interrogatory. At the time of said subscription, and for a year or two after, did not the bills of the District banks pass in ordinary transactions among the people in the District as par; and if they did not, how did they pass? And did not the treasury pay out as par District bills which it had received as par; and if not, how otherwise, at about and immediately after said subscription of $25,000 to said loan?

Answer. The bills of the District banks did pass in ordinary transactions at par among the people at that time, and the treasury did make payments to persons in the District by checks on the said Bank of Columbia, for which such persons received the bills of said bank at par. There may have been exceptions to this general practice, of which I have no particular knowledge.

8th cross-interrogatory. Do you not know that there were a large number of loans at the time you refer to when you subscribed which were not all taken up, and can you positively swear for which loan you actually subscribed, and have you any written memorandum made at the time to refresh your memory, and if so, give a copy thereof?

Answer. I do know that there were heavy amounts then offered which were not taken; but do not know which loan was awarded to us; and for the reason before mentioned that the books have all been destroyed, I have no written memorandum to refresh my memory.

9th cross-interrogatory. At the time of the subscription for said loan, where was the Bank of Columbia located, and who were president and cashier thereof; and what were your relations to said bank; and how, and in what manner, and where did you transact the business you did for the bank; and where did said William Whann transact business for said bank?

Answer. The Bank of Columbia was located in Georgetown, District of Columbia; General John Mason was the president, and William Whann was cashier of said bank. As stated in my answer to a former cross-interrogatory, I was the agent of said bank, and received deposits and paid checks thereon, at their office in the Treasury Department. The said William Whann transacted business at the principal bank in Georgetown.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not, sir; except that immediately after accepting my bid for the $25,000, the Secretary refused to sell any more of the stock at the same rate.

RD. SMITH.

Sworn to and subscribed this 6th day of October, 1858, before me,
[L. S.] EDM. F. BROWN,
Commissioner of the Court of Claims.

A.

For moneys received on account of the loan of six millions of dollars, per act of 24th March, 1814

From Samuel Flewwelling, cashier of the Manhattan Company, New York	$880,007 90
From Jonathan Smith, cashier of the Bank of Pennsylvania	43,222 22
From William Whann, cashier of the Bank of Columbia, Georgetown	25,000 00
From William Paton, jr., cashier of the Mechanics' Bank, Alexandria	100,000 00
From M. C. Stephens, cashier of the Bank of Newbern	25,000 00
From John Lukens, cashier of the Planters and Mechanics' Bank, Charleston	50,000 00
	1,123,230 12

TREASURY DEPARTMENT,
Register's Office, June 21, 1858.

I certify the foregoing to be a true abstract from page 13 of an account of the receipts and expenditures of the United States for the year 1815, stated in pursuance of the standing order of the House of Representatives of the United States, passed on the 30th day of December, 1791, now on file in this office.

F. BIGGER, *Register.*

TREASURY DEPARTMENT,
Register's Office, June 21, 1858.

SIR: In compliance with your oral request of this date, I herein enclose an extract from page 13 of an account of the receipts and expenditures of the United States for the year 1815, relating to moneys received on account of the loan authorized per act of March 24, 1814.

I am, very respectfully, your obedient servant,

F. BIGGER, *Register.*

Hon. R. W. THOMPSON,
Washington City.

UNITED STATES COURT OF CLAIMS.

RICHARD IRVIN *vs.* THE UNITED STATES.

Questions propounded to Richard Smith on the part of the petitioner.

1. Examine the paper now shown you, marked A, which purports to be a copy from an account of moneys received by the United States, "on account of the loan of six millions of dollars, per act of 24th March, 1814," with the certificate of F. Bigger, Register of the Treasury, dated June 21, 1858, and say whether or no you have any knowledge of the item in these words and figures: "*William Whann, Bank of Columbia, Georgetown*, $25,000;" and if you have, state all you know about it.

2. Your deposition was taken in the case pending in this court in favor of R. R. Ward, F. G. Halleck, and Jacob Little, assignees of Jacob Barker, and against the United States, and in answer to the 16th interrogatory propounded to you therein, you say as follows:

"On the morning of the day when the news of the treaty of peace was received, which was some time about February, 1815, I applied to the treasury, at the request of the Farmers' Bank of Annapolis, to subscribe for United States stock to the amount of $25,000, at 85 per cent., payable in the notes of the banks of the District of Columbia. The Secretary was not in his office. Mr. Sheldon, the acting chief clerk, received the offer, but could not give the answer in the absence of the Secretary. I called on the following day, and received from Mr. Dallas the answer that I should have the stock. It was accordingly taken at that rate."

Will you now state the bills of the banks in the District of Columbia in which this $25,000 was paid; and whether or no the entry referred to in the 1st interrogatory, to wit: "William Whann, Bank of Columbia, Georgetown, $25,000," has any reference thereto? Is that the loan made by you?

3. Will you state what was the value at the time you paid this $25,000, as compared with specie, of the bills of the banks of the District of Columbia, in which the same was made? How much below par?

4. Did the banks in the District of Columbia pay specie for their bills at that time? If not, when did they suspend, and when resume?

R. W. THOMPSON,
Attorney for petitioner.

WASHINGTON, *June* 28, 1858.

Cross-interrogatories by the solicitor.

First. Have you any written memorandum, made by yourself or by your order at the time of the transaction, to refresh your memory and enable you to state any fact in reply to the first direct interrogatory; and if so, what, when, and by whom made, and give a copy thereof?

Second. Do you know that William Whann did not subscribe for

$25,000 of the stock mentioned in said first direct interrogatory, either on his own account or on account of the Bank of Columbia; and if so, how do you know that he did not do so?

Third. If you made the subscription yourself for the Farmers' Bank of Annapolis, as you stated in your former examination in Barker's case, why was not the loan entered in your name, or in that of the said Farmers' Bank; and what has changed your opinion as to your being the subscriber for this loan?

Fourth. Do you know of your own knowledge, and, if so, how do know, that your subscription was entered in the name of William Whann? And do you know, and, if so, how, that this stock was ever transferred by him to the Farmers' Bank, and when did the transfer take place?

Fifth. Do you know that the said $25,000 loan was, in fact, paid in bills of the District banks; and, if so, how do you know it, and in the bills of what banks was it paid, and by whom, and when, and where?

Sixth. Did the Farmers' Bank of Annapolis pay you the amount of the loan in the bills of the District banks; and if so, when, and through whom, and where, and in the bills of what bank in particular was it paid?

Seventh. At the time of said subscription, and for a year or two after, did not the bills of the District banks pass, in the ordinary transactions among people in the District, at par; and if they did not, how did they pass? And did not the treasury pay out at par District bills which it had received at par; and if not, how otherwise, at about and immediately after said subscription of $25,000 to said loan?

Eighth. Do you not know that there were a large number of loans, at the time you refer to when you subscribed, which were not all taken up, and can you positively swear for which loan you actually subscribed, and have you any written memorandum, made at the time, to refresh your memory, and if so, give a copy thereof?

Ninth. At the time of the subscription for said loan, where was the Bank of Columbia located, and who were president and cashier thereof; and what were your relations to said bank, and how, and in what manner, and where did you transact the business you did for the bank; and where did said William Whann transact business for said bank?

R. H. GILLET, *Solicitor.*
By JNO. D. McPHERSON,
Deputy Solicitor.

TREASURY DEPARTMENT,
Register's Office, May 13, 1857.

SIR: In reply to the reference of the order of the Court of Claims, in the case of Richard Irvin, trustee, *vs.* The United States, I have the honor to transmit herewith the account called for, from page 13 of 24th Statement of Receipts and Expenditures of the United States.

The account between the Treasurer of the United States and the

Mechanics' Bank of New York, in 1814, is not in this office, and I am informed by the treasurer that the book containing the account was destroyed by the burning of the treasury building in 1814.

The letter and order from the Court of Claims is herewith returned.

I have the honor to be, very respectfully, your obedient servant,

F. BIGGER, *Register.*

Hon. HOWELL COBB,
Secretary of the Treasury.

Extract from page 13 *of a book kept in the Register's office, entitled "Receipts and Expenditures of the United States,* 1814," 24*th statement.*

For moneys received on account of the loan of ten millions of dollars, per act of March 24, 1814:

From Levi Cutter, cashier of the Cumberland Bank, Maine	$94,000
From Joseph Swift, cashier of the Portland Bank, Maine	50,000
From Henry S. Langdon, cashier of the Union Bank of New Hampshire	40,000
From J. W. Treadwell, cashier of the Merchants' Bank, Salem, Massachusetts	416,156
From Saml. Frothingham, cashier of the State Bank, Boston, Massachusetts	349,900
From Seth Trufant, cashier of the Lincoln Bank, Bath, Massachusetts	25,000
From N. Waterman, jr., cashier of the Roger Williams Bank, Rhode Island	35,300
From John D. Wolf, cashier of the Bank of Bristol, Rhode Island	100,000
From John R. Sherman, cashier of the Newport Bank, Rhode Island	35,000
From Thomas W. Perry, cashier of the Washington Westerly Bank, Rhode Island	30,000
From Normand Knox, cashier of the Hartford Bank, Connecticut	25,000
From William Lyon, cashier of the New Haven Bank, Connecticut	25,000
From Alanson Douglas, cashier of the Bank of Troy, New York	50,000
From G. A. Worth, cashier of the Mechanics and Farmers' Bank, Albany, New York	450,000
From Samuel Flewwelling, cashier of the Manhattan Company, New York	379,300
From Whitehead Fish, cashier of the Mechanics' Bank, New York	2,717,500
From G. B. Vroom, cashier of the City Bank, New York	500,000
From Jonathan Burrall, cashier of the Bank of America, New York	575,000
From John W. Yates, cashier of the New York State Bank, Albany, New York	150,000
From Hen. Kuhl, cashier of the Farmers and Mechanics' Bank, Philadelphia	120,000
From Jonathan Smith, cashier of the Bank of Pennsylvania	288,000
From Quintin Campbell, cashier of the Philadelphia Bank	28,000
From James Cox, cashier of the Bank of Baltimore, Maryland	71,900
From George T. Dunbar, cashier of the Commercial and Farmers' Bank, Baltimore	191,000
From Dennis A. Smith, cashier of the Mechanics' Bank, Baltimore	200,000
From Robert Wilson, cashier of the Bank of Maryland	50,000
From Samuel Eliot, jr., cashier of the Bank of Washington	100,000
From Alexander Kerr, cashier of the Bank of the Metropolis	33,000
From William Whann, cashier of the Bank of Columbia, Georgetown	327,525
From Clement Smith, cashier of the Farmers and Mechanics' Bank, Georgetown	50,000
From James L. McKenna, cashier of the Bank of Alexandria	30,000
From William Nekervis, cashier of the Farmers' Bank, Virginia	88,000
From John Wilder, cashier of the Branch Bank of Virginia, Petersburg	88,000
From Thomas W. Bacot, cashier of the Bank of South Carolina	90,000
From John Newell, cashier of the Union Bank of South Carolina	133,000
Total	7,935,581

TREASURY DEPARTMENT, *Register's Office, May* 13, 1857.

F. BIGGER, *Register.*

TREASURY DEPARTMENT,
Register's Office, May 26, 1858.

I hereby certify that it appears by the books of this office that there was held by the "President, Directors & Co., of the Mechanics' Bank, New York," on the 31st December, 1814, $188,317 68 of the loan of 1814 of $10,000,000, and supplemental stock amounting to $16,477 27, and that the whole of said stock was standing to the credit of said President, Directors & Co. on the 31st March, 1815.

F. BIGGER, *Register.*

TREASURY DEPARTMENT, *January* 6, 1859.

SIR: Having referred your letter of the 5th instant to the Register of the Treasury, I have to transmit herewith a copy of his report thereon, giving such information as his office affords, in reply to your inquiry relative to payments into the treasury in the early part of 1815 on account of loans, and the act of Congress under which said loan was made.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

R. W. THOMPSON, Esq.,
Washington, D. C.

TREASURY DEPARTMENT,
Register's Office, January 6, 1859.

SIR: In reply to the letter of R. W. Thompson, of yesterday, referred to this office, I have the honor to state that the books of this office show that, under date of March 31, 1815, the sum of six hundred thousand dollars ($600,000) was covered into the treasury as having been received on account of the loan of three millions (3,000,000) of dollars per act of 15th November, 1814, and that the books do not show that any other amount was paid into the treasury "between December 31, 1814, and the close of the first quarter of the year 1815," on account of loans authorized subsequent to March 24, 1814.

I am, very respectfully, your obedient servant,

F. BIGGER, *Register.*

Hon. HOWELL COBB,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Register's Office, October 18, 1859.

SIR: In reply to the order of the Court of Claims of the 14th instant, referred to this office, I have the honor to state that upon reference to the ledger kept by the commissioner of loans for the State of New York for the ten million loan of 1814, I find that there was

issued on the 25th August, 1814, to the "President, Directors & Co., Mechanics' Bank, New York," stock for $174,772 72; that on the 12th December, 1814, they transferred $10,000 of the above amount to other parties, leaving to their credit $164,772 72; that on the 12th December, 1814, supplemental stock for $16,477 27 was issued to the said President, Directors & Co., and that they appear to have held the $164,772 72 until the 5th April, 1815, and the supplemental stock for $16,477 27 until the 6th of the same month, when they transferred the same, and both these accounts were then balanced.

I have the honor to be, sir, your obedient servant,

F. BIGGER, *Register*.

Hon. HOWELL COBB,
Secretary of the Treasury.

TREASURY DEPARTMENT,
October 18, 1859.

In compliance with your order of the 14th instant in the case of Richard Irvin, trustee, *vs.* The United States, I have the honor to enclose herewith the report of the Register of the Treasury of this date, showing that on the 25th August, 1814, there was issued to the "President, Directors & Co. of the Mechanics' Bank, New York," $174,772 72 on account of the ten million loan of 1814; that on the 12th December, 1814, that bank transferred to other parties $10,000 of this amount, leaving $164,772 72 of this loan to its credit, and on that day the sum of $16,477 27 of supplemental stock was issued to that bank, being 10 per cent. upon the amount then held by said bank in that loan, which last named issue is presumed to have been made in fulfilment of the stipulation alleged to have been made with Jacob Barker on the 2d May, 1814, and which appears to have finally closed the transaction, when this stock was all transferred by said bank in April, 1815.

In reply to your request for any other information tending to elucidate this claim, I beg leave to state that the whole correspondence of the office of the Secretary of the Treasury, anterior to 1833, was destroyed by the burning of the treasury building in that year. Excepting so far as copies of various letters of this department on the subject of the ten million loan of 1814 have been incorporated or referred to in the several reports made previous to 1833 by the committees of the Senate and House of Representatives who had been charged, from time to time, with the investigation of the claims arising out of the alleged stipulation made with Jacob Barker, before referred to, this department is unable to furnish any cotemporary explanation of its proceedings in regard to the loan in question from the correspondence in regard to the difference of exchange between the cities of New York, Philadelphia, Baltimore, and Washington during the year 1814. The petition transmitted with your order is herewith returned.

HOWELL COBB,
Secretary of the Treasury.

The COURT OF CLAIMS.

COURT OF CLAIMS.

RICHARD IRVIN, Trustee, *vs.* THE UNITED STATES.

Brief of petitioner.

I. By the act of 24th March, 1814, (3 *Statutes at Large*, 111,) the President of the United States was authorized to borrow, for the use of the United States, on the best terms he could, $25,000,000. "Neither the rate of interest nor the price of the stock was limited."—(See *American State Papers*, vol. 9, p. 4.)

II. Part of the $25,000,000 aforesaid was borrowed by the Secretary of the Treasury, on the 2d day of May, 1814, at the rate of $88 in money for $100 in public stock, and was (on the 25th day of May, June, July, and August) paid to the Treasurer of the United States, in lawful money, or in money of equal value to the lawful money of the United States, *upon condition that* "if any part of the sum of $25,000,000 * * is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons" whose money he then borrowed.—(See *American State Papers*, vol. 8, p. 845.)

III. The condition in the contract must be construed to refer—

1st. To any part of the sum of $25,000,000 that might be borrowed; and take effect whenever any part of the same was "borrowed upon terms more favorable to the lenders."

2d. More favorable in price than $83 in lawful money of the United States for $100 in public stock.

3d. More favorable as respects the value of the bank notes or money borrowed.

Because, to have "the benefit of the same terms" includes terms more favorable as to price; and also more favorable in respect to the actual value of the money borrowed.

IV. The condition of the contract was such, that if the United States should borrow so as to accept a sum less than $88 in lawful money, or money of equal value, and give $100 in public stock therefor, then the persons whose loans he had accepted at $88 in money for $100 in stock should have additional stock equal to the difference.

2d. If the United States should borrow depreciated bank notes at par, at $88, or any less price, and give $100 in public stock therefor, the persons whose loans had been accepted and paid at $88 in lawful money for $100 in stock should have additional stock, equal to the difference in value between the lawful money and the depreciated bank notes.

V. The contract between the United States and the persons who made the loan of May 2 was DEFINITE AND CERTAIN as to the amount of money each person was to loan.

It was open and contingent as to the amount of stock which each person was to receive for such loan, saving that it should not be less than $100 in stock for $88 in money.

VI. When the United States borrowed $1,800,000 of Dennis A.

Smith, (August 31, 1814,) at $80 in money for $100 in public stock, and the same was paid in depreciated bank notes, *at par*, viz:

¼ on the 10th Sept., in notes of the value of 90 cents to the dollar.
¼ do 10th Oct., do. do. 88 do.
¼ do 10th Nov., do. do. 80 do.
¼ do 10th Dec., do. do. 76 do.

as valued in the certificate of Prime, Ward & Sands, or at "not less than 20 per cent. discount," as deposed to by Dennis A. Smith, then, on the 10th day of December, 1814, the persons who made the previous loan at $88 in lawful money for $100 in public stock, (and being holders of the stock,) were entitled to "the benefit of the same terms," and to have had additional stock, equal to the difference between $80 and $88 for $100 in stock; (*i. e.*, 10 per cent.;) and also to additional stock, equal to the difference in value between the lawful money of the United States and such depreciated bank notes, that is, to the difference between a dollar and 90, 88, 80, or 76 cents, as the case may be.

VII. The supplemental stock, *ten per cent.*, issued under the order of November 30, 1814, (*House Report*, 33d Cong., 2d sess., No. 140, p. 14,) is to be deemed and taken as so much on account.

1st. Because more stock was *then due*, in order to give "the benefit of the same terms."

2d. Because it could not then be known how much more would be ultimately due, by reason of a further depreciation in the value of the bank notes which were to be received in payment, December 10.

3d. Because other money was expected to be and actually was subsequently borrowed "upon terms more favorable to the lenders."

VIII. In February, 1815, when the Bank of Annapolis loaned to the United States a part of the before-mentioned $25,000,000, *in depreciated bank notes at par*, at the rate of $85 in notes for $100 in public stock, which notes were 24 per cent. less in value than lawful money, (see deposition of Richard Smith,) the persons who loaned at $88 in lawful money for $100 in such stock were entitled to additional stock, equal to the difference between $88 in lawful money and $85 in bank notes, of the value of 76 cents to the dollar; because, to have "*the benefit of the same terms*" includes both the price paid, $85 for $100, and the value of the money, 76 cents to the dollar, in which such price was paid.—(See *American State Papers*, vol. 9, p. 7.)

IX. The original contract of May 2, 1814, is still open between the original parties. The stock issued at the rate of $100 for $88 in money, and the supplemental stock of 10 per cent, are both payments on account; and the notice on the face of the stock, which was issued in lieu of the original stock, taken in connexion with the public notice given by the Comptroller, November 30, 1814, (that the 10 per cent. supplemental stock "is deemed to be in full of all demands upon the government for further issues of stock,") operated to prevent any transfer of the benefit of the original condition, as to loans on "terms more favorable to the lenders," and to keep the accounts open between the original parties. And the refusal to make any further allowance was, on the part of the United States, a waiver of all demands for any further settlement, and left the public creditors, who made the loan of May 2, 1814, in the condition, (stated by the Comptroller in his

letter of November 24, 1814,) as follows: "No exaction is made from them of any release whatever of their rights or claims in this respect. Their rights will still remain with themselves, and their remedies with Congress."—(See *House Report*, No. 140, 33d Cong., 2d sess, p. 47.)

X. In the contract between the United States and the persons who made the loan of May 2, 1814, the United States contracted to pay interest at 6 per cent.; therefore the persons who made that loan, and their representatives, are now to be placed in the same condition as though the additional stock, which should have been issued to them in February, 1815, had been issued and was now to be paid with interest at 6 per cent. from July 10, 1814, until the same is paid.—(See *American State Papers*, vol. 8, p. 845.)

XI. If the court shall determine that the United States are to allow and settle for the difference between the value of the money loaned May 2, 1814, at $88 for $100 in public stock, and the loan made by the Bank of Annapolis in February, 1815, at $85 in depreciated bank notes, at a discount of twenty-four per cent. for $100 in public stock, then the petitioner will be entitled to a decision for $45,830 49.

But if the court shall adopt as the basis of settlement the loan made by Dennis A. Smith August 31, 1814, at $80 in depreciated bank notes, at twenty per cent. discount, for $100 in public stock, then the petitioner will be entitled to a decision for $48,062 50.

But if the court shall adopt as the basis the same loan at $80 in depreciated bank notes, at a discount as certified to by Prime, Ward & Sands, (House Report, No. 140, 33d Congress, 2d session, p. 23,) then the petitioner will be entitled to a decision for $39,087 50, *with interest, in either case*, from July 10, 1814, at six per cent., until paid.

First estimate, on loan at $85, in notes at twenty-four per cent. discount, for $100 in public stock.

$153,800 will purchase in bank notes, at seventy-six cents to the dollar, notes to the nominal amount of $202,368 42, which sum in notes will purchase stock, at $85 in such notes for $100 in stock, to the amount of $238,080 49; from which sum deduct the original stock issued at $88 for $100, viz: $174,772 72 and the ten per cent. additional stock, $17,477 28, making $192,250; and it will leave the sum of $45,830 49 to be allowed on final settlement, with interest.

Second estimate, on loan at $80 in notes, at twenty per cent. discount, for $100 in public stock, $153,800 will purchase in bank notes, at eighty cents to the dollar, notes to the nominal amount of $192,250, which sum in notes will purchase stock, at $80 in such notes for $100 in stock, to the amount of $240,312 50, from which deduct the original stock, $174,772 72, and supplemental stock, $17,477 28, *i. e.*, $192,250, and it will leave the sum of $48,062 50 to be allowed on final settlement, with interest.

Third estimate. The particulars of this estimate are stated in detail in the petition, and show the amount which should have been issued, viz: $231,337 50, from which deduct the amount of stock and supplemental stock which was issued, $192,250, and it will leave the sum of $39,087 50 to be allowed on final settlement, with interest.

JOHN ELY,
Attorney for Petitioner.

UNITED STATES COURT OF CLAIMS.

February, 1858.

RICHARD IRVIN, Trustee, &c., *vs.* THE UNITED STATES.

Congress passed an act March 24, 1814, authorizing the President to borrow $25,000,000. The loan was made to pay the expenses of the war. Money was scarce, and there was great difficulty in procuring the means necessary for carrying on the government.

The Secretary of the Treasury, on the 4th of April, 1814, caused a notice to be published that proposals would be received by him until the 2d day of May, 1814, "from any person or persons, body or bodies corporate, who may offer, for themselves or others, to loan to the United States, on account and in part of the aforesaid sum of $25,000,000, the sum of $10,000,000, or any part thereof not less than $25,000."

One of the terms of the loan, as specified by this notice, was as follows:

"If proposals differing in terms from one another should be accepted, the option will be allowed to any person whose proposals may be accepted, of taking the terms allowed to any other person whose proposals may be accepted"—(Am. State Papers, vol. 2, 845; Stanton's Report to Ho. of Reps, 13.)

On the 30th of April, 1814, Jacob Barker addressed a letter to the Secretary of the Treasury, wherein he proposed to loan the United States $5,000,000 of the $10,000,000 advertised for, upon certain conditions. The principal condition was expressed by him in these words:

"It being understood and agreed that if terms more favorable to the loaners be allowed for any part of the $25,000,000 authorized to be borrowed the present year, the same terms are to be extended to this contract."—(Am State Papers, vol. 2, 845.)

The Secretary of the Treasury replied to this letter May 2, 1814, as follows:

"The terms upon which the loan has been concluded are as follows, viz:

"Eighty-eight dollars in money for each hundred dollars in stock; and the United States engage, if any part of the sum of $25,000,000 authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons who may then hold the stock, or any part of it, issued for the present loan of $10,000,000."—(Am. State Papers, vol. 2, 845; Stanton's Report, 18.)

Within the time specified in the notice of the Secretary of the Treasury, other persons besides Mr. Barker made proposals for sums varying in amount, and to each of these a letter, similar to the foregoing one to Mr. Barker, was addressed by the Secretary of the Treasury. Amongst these was Whitehead Fish, of New York, who was then the cashier of the "Mechanics' Bank of New York," and who had proposed a loan of $250,000.—(Am. State Papers, vol. 2, 846.)

The "Mechanics' Bank, in the city of New York," was chartered by the legislature of that State March 23, 1810, to continue until "the second Tuesday in April, 1823." By act of April 8, 1811, the charter was continued and extended to "the second Tuesday of April, 1832;" and by act of February 2, 1831, it was still further extended to

January 1, 1855.—(Pamphlet copy of "Laws of the State of New York Relative to Moneyed Corporations, &c.")

Of the $250,000 loaned by Whitehead Fish, $153,800 was on account of the "Mechanics' Bank," which was paid by the bank to the credit of the Treasurer of the United States, as follows: $38,458 on the 26th May, 1814, and $115,350 on the 29th of June, 1814. This money was paid, of course, *in funds of par value,* according to the notice, and public stock was issued for it by the United States at the rate of $100 of stock for $88 of the money so paid.

On September 26, 1814, the Secretary of the Treasury made a report to the Senate upon the "State of the Finances," communicating the fact of having negotiated this loan, he calling it the loan of May 2, 1814. He says:

"Of the sum of $9,229,056, which were offered at eighty-eight per cent., or at rates more favorable to the United States, $5,000,000 were offered with the condition annexed that if terms more favorable to the lenders should be allowed for any part of the $25,000,000 authorized to be borrowed the present year, the same terms should be extended to those holding the stock of the ten million loan"

Here the Secretary is, of course, speaking of the proposition of Barker; but he does not state accurately the *condition annexed* to the contract. He speaks of it, in this report, as if the condition attached only to that part of the $25,000,000 loan "*authorized to be borrowed the present year*"—that is, the year 1814. Whereas the real *condition annexed* was stated by the Secretary of the Treasury, in his letter of May 2, 1813, to be that it should extend to "*any part*" of the loan. "If," said he, "*any part* of the sum of $25,000,000, authorized to be borrowed by the act of the 25th of March, 1814, is borrowed upon terms more favorable to the lenders, &c." Here the condition was in express terms extended to the *whole* $25,000,000 loan.

But the Secretary, in continuation, spoke of the reason why he accepted this condition, and the advantages of the loan, as follows:

"Taking into consideration the expectation then (May 2, 1814) entertained of an early return of peace, and the importance of maintaining the public credit by sustaining the price of stock in the meantime, and also considering the measure was sanctioned by precedent, it was agreed to *except the loan with that condition.* Had the sum to which the condition was annexed been rejected, the consequence would have been to reduce the amount obtained to less than $5,000,000, a sum altogether inadequate to the public demands, or, by depressing the stock to 85 per cent, to have obtained only a little more than $6,000,000, which would still have been insufficient to answer the purposes of government."

This statement of the Secretary of the Treasury shows how important it was to the government that the condition here spoken of should be accepted. It was absolutely necessary to furnish money to the government and sustain its credit.—(Am. State Papers, vol. 2, 841.)

On the 22d August, 1814, proposals were again invited by the Secretary of the Treasury for an additional loan of $6,000,000, a part of the $25,000,000 loan, or, as the Secretary expressed it, "in further execution of the power contained in the act of the 24th March, for borrowing $25,000,000." Of this there was only offered $2,823,300, "of which," says the Secretary, "$100,000 were at rates less than 80 per cent., and $2,213,000 were at the rate of $80 in money for $100 of six per cent. stock. The remaining sum of $510,300 was offered at various rates from 80 to 88. Notwithstanding the reduced rate at which the greater part of the above sum was proposed, yet as

the market price of stock hardly exceeded 80 *per cent.*, as there was no prospect of obtaining the money on better terms, and as it was *indispensable for the public service*, it was deemed advisable to accept the sums offered *at that rate*"—that is, $80 in money for $100 of stock.—(Am. State Papers, vol. 2, 842.)

Various causes contributed to make it difficult to obtain these loans. The Secretary of the Treasury, referring to this in his report, said:

"The difficulties already experienced in obtaining loans, and the terms on which it has been found necessary to accept them, &c.

"The suspension of payments in specie by many of the most considerable banks in the United States, and in those most important in the money operations of the treasury, has produced and will continue to cause difficulties and embarrassments in those operations. The circulating modium of the country, which *has consisted principally of bank notes*, is placed upon a new and uncertain footing," &c

Therefore, he recommended that—

"If further reliance must be had on loans, it is respectfully suggested that *additional* inducements should be offered to capitalists to advance their money," &c—(Am. State Papers, vol. 2, 842.)

It is very conclusively shown by the foregoing language of the Secretary of the Treasury, that the loan of 2d May was obtained upon terms advantageous to the government, and that the government was entirely satisfied with the condition annexed to the contract.

The notice published for this $6,000,000 loan did not contain the condition annexed to the $10,000,000 loan, nor was it referred to in the correspondence between the lenders and the Secretary of the Treasury.—(Am. State Papers, vol. 2, 846, 847.)

The money obtained upon this $6,000,000 loan was, by the terms of the contract, payable in *banks*, so that the *real* amount received by the government was the value at that time of the paper issues of the deposit banks. The notice of the Secretary contained the following:

"The amount loaned is to be paid *into a bank or banks*, authorized by the treasury, in instalments in the following manner, viz:

"One-fourth part, or $25 on each hundred dollars, on the 10th day of September next.

"And one-fourth part on the 10th day of each of the ensuing months of October, November, and December next.—(Am. State Papers, vol. 2, 846.)

This loan was paid into the banks of Boston, New York, Philadelphia, Baltimore, Washington, and other inferior points, and was, of course, disbursed in the bills of those banks, the government receiving therefor only what they were worth in the market. We can form some idea of what their value was in October, 1814, from the following extract from a letter of Mr. Dallas, Secretary of the Treasury, to Mr. Eppes, chairman of the Committee of Ways and Means of the House of Representatives, dated October 17, 1814. He says:

"The condition of the circulating medium of the country presents another copious source of mischief and embarrassment. The recent *exportations* of specie have considerably diminished the fund of gold and silver coin; and another considerable portion of that fund has been drawn by the timid and wary from the use of the community into the private coffers of individuals. On the other hand, the multiplication of banks in the several States has so increased the quantity of paper currency that it would be difficult to calculate its amount, *and still more difficult to ascertain its value*, with reference to the capital on which it has been issued. But the benefit of even this paper currency is in a great measure lost, as the *suspension of payments in specie* at most of the banks has suddenly broken the chain of accommodation that previously extended the credit and the circulation of the notes which were emitted in one State into every State of the Union. It may, in general, be affirmed, therefore, that there exists at this time no adequate circulating medium common to the citizens of the United States. The moneyed transactions of private life are at a stand, and the fiscal operations of the government labor with extreme inconvenience."—(Am. State Papers, vol. 2, 866.)

At the date of this report of the Secretary of the Treasury, October 17, 1814, there had been obtained of the $25,000,000 loan the sum of $10,895,000. The Secretary had authorized the negotiation in Europe of $6,000,000 of six per cent. stock, as an additional part of it; and there remained unexecuted authority to borrow the additional sum of $8,105,500 to make up the $25,000,000.—(Am. State Papers, vol. 2, 842, 868)

The condition of the banks continued to grow worse. Mr. Dallas, in a circular from the Treasury Department, dated November 25, 1814, just at the time when a portion of the $6,000,000 loan was payable, said:

"The sudden determination of most of the banks *in which the deposits of public money were made to refuse payment of their notes*, and of *drafts upon them, in specie*, deprived the government of the use of its gold and silver, &c."—(Am. State Papers, vol. 2, 880)

In a letter from Mr. Dallas, Secretary of the Treasury, to Mr. Eppes, chairman of the Committee of Ways and Means, dated February 24, 1815, the amount borrowed on account of the $25,000,000 loan is stated as follows: $9,919,476,25 of the $10,000,000 loan, and $4,342,875 of the $6,000,000 loan, making a total of $14,262,351 25.—(Am. State Papers, vol. 2, 917.)

It was also stated in this same letter that the stock sent to Europe, $3,000,000, instead of $6,000,000, had not been and probably would not be sold.

A precedent had been established by the previous action of the Treasury Department, justifying the condition annexed by the Secretary of the Treasury to the loan of May 2, 1814—the $10,000,000 loan.

By act of Congress, February 8, 1813, the President was authorized to borrow not exceeding $16,000,000. On the 18th of March, 1813, Mr. Gallatin, Secretary of the Treasury, gave notice of this loan, with the following condition:

"If any proposals differing in terms from one another, or from those on which subscriptions have already or may be made, prior to the 1st day of April next, should be excepted [accepted,] all the parties, including those who have already subscribed or may subscribe prior to the 1st day of April next, *shall be placed on the same footing*, by giving to all the option either of the terms offered by them, or on which they have subscribed, or of those offered by *any other persons*, and which shall have been accepted."—(Am. State Papers, vol. 2, 625.)

Some portion of this loan was taken before the 18th day of April, 1813, and a portion of it after, the terms of subscription being different. Consequently, without waiting for the parties to apply, the Secretary of the Treasury issued another notice, informing them that they were entitled to the benefit of the condition annexed to the loan. This notice was dated April 15, 1813, and stated the different terms upon which the several loans had been made, requested the holders of the stock certificates to select whichsoever of them they preferred, and indorse the same on their certificates, when new ones would be issued in lieu of them, conformably to their selections.—(Am. State Papers, vol. 2, 626.)

The holders of stock under the $10,000,000 loan, desiring to have their contract complied with by the government pursuant to its terms and the above precedent, applied, after the bids for the $6,000,000 loan had been accepted, for new stock to cover the difference betweer the terms upon which their loans had been made and those upoi

which the latter were made, and which were more advantageous. The question as to their right to this new stock was referred by the Secretary of the Treasury to the Attorney General in October, 1814, and he was asked to give his opinion upon four questions, viz:

"*First question.*—Does the specific condition in Mr. Campbell's letter of the 2d of May, 1814, [the letter to Mr. Barker and the other lenders,] admit the first lenders to the benefit of the terms of the second loan for the whole amount of their subscriptions, or only in proportion to the amount of their second loan, which still leaves a considerable part of the $25,000,000 unloaned?"

"*Second.*—Was the condition absolute, and executed on making the second loan; or does it remain open, subject to all the possible variations of the price of the subsequent loans, and until the whole $25,000,000 have been loaned?"

"*Third.*—To whom is the stock for the difference between the price of the first and second loans to be issued—to the contractors, the assignee, or the pledgers of the stock issued on the first loan?"

"*Fourth.*—If the condition remains open until the whole sum of the $25,000,000 has been loaned, ought there to be successive issues of stock for the difference, or ought there to be only one issue of stock, to be made at the final execution of the authority to borrow the $25,000,000?"

To these inquiries the Attorney General gave the following answer:

"*First.*—I think that, looking to Mr. Campbell's letter of the 2d of May, 1814, with a view to its fair construction on behalf of the public creditors, the first lenders are entitled to the benefit of the terms of the second loan to the whole amount of their subscriptions. Its language could scarcely fail to have awakened in them that expectation."

"*Second.*—I think that the condition stated in the Secretary's letter attached as soon as the second loan was made; that, on the happening of that event, it no longer remained open and executory, subject to all the possible variations in price which might mark subsequent loans until the whole $25,000,000 should be exhausted."

"*Third.*—I think that the owners of the previous stock, at the time the second loan was made, were the persons entitled to the additional stock for the difference between the price of the first and second loans."

"*Fourth.*—The answer to this question is embraced in the answer to the second question. The arguments from inconvenience are too strong to have it supposed that it could have been the intention of the government to authorize successive and indefinite emissions of supplemental stock, until the entire loan, divided, perhaps, into several distinct portions, even after the second should be completed. This view of the subject may serve to corroborate the propriety of the second answer, which treats the condition held out to the first lenders as having become absolute the moment the second loan was made."

This opinion was given by Mr. Rusk, Attorney General, October 22, 1814.—(Stanton's Report, 13, 14.) It laid down the proposition in express terms, that those who took the $10,000,000 loan were entitled to the benefit of the terms upon which the $6,000,000 loan was made, to the full amount subscribed by them. But it attached a limitation to this right not warranted, evidently, by the terms of Mr. Campbell's letter of May 2, 1814, to Mr. Barker and other lenders. In that letter the Secretary distinctly said: "If *any part of the* $25,000,000, authorized to be borrowed by the act of the 24th of March, 1814, is borrowed, &c." This language is not susceptible of mistake. It is clear and explicit. The Attorney General certainly did not consider the language carefully when he confined the condition to the second or $6,000,000 loan, and denied that the contract was still executory, subject to the variations of subsequent loans, until the whole $25,000,000 should be borrowed. He enters into no general reasoning; but the manner in which he states the result to which he came shows that his opinion was not well matured. "I think," says he, "that the condition attached as soon as the second loan was made?" Why did it attach? Because Mr. Campbell had said in his letter that if loans were made upon more favorable terms, the lenders of the $10,000,000 should have the benefit of them. But he did not say, that if the *second*, or *third*, or *fourth* loans were made upon

more favorable terms; nor did he employ any words of limitation. He said, "if *any part of the* $25,000,000, &c.," is borrowed upon more favorable terms, "the benefit of the *same* terms"—that is, of the terms upon which "*any part of the* $25,000,000" shall be borrowed—shall be extended to those who may, at that time, hold the stock. Certainly, the $6,000,000 are "*part*" of the $25,000,000; but they are not *all* of it. If they were, the Attorney General would have been right. But as the first and second loans amounted to only $16,000,000, and left $9,000,000 still to be borrowed, these $9,000,000 were just as much a "*part*" of the $25,000,000 as the $6,000,000 were, or else the condition in Mr. Campbell's letter was unmeaning. Hence, it necessarily follows that this condition attached just as much when "*any part*" of this $9,000,000 was borrowed, as it did when the $6,000,000 was borrowed.

As this proposition cannot be successfully assailed, the condition did not become "absolute" upon the making of the $6,000,000 loan, but must have remained "open and executory," so as to give the parties who had made the $10,000,000 loan the benefit of all possible variations in price, until the whole $25,000,000 was borrowed. They had the right to claim the benefit of any terms better than their own, upon which the $6,000,000 loan was made, and to claim or not to claim, as they pleased, any other subsequent and better terms, if there were such, in borrowing "*any part* of the $25,000,000." This construction cannot *now* be seriously questioned, for a careful examination of the history of this business, subsequent to the opinion of the Attorney General, will show that both he and the Secretary of the Treasury abandoned the ground originally assumed by him. That the Secretary did so is conclusively shown; and that the Attorney General did is an inference that cannot be escaped.

On the 19th November, 1814, a copy of the opinion of the Attorney General was communicated by the Secretary of the Treasury to the Comptroller of the Treasury, with instructions to comply with its principles in issuing the additional stock claimed by the lenders of the $10,000,000 loan. He says:

"Enclosed, you will receive a copy of the opinion of the Attorney General on the legal construction of the contract or contracts made by the late Secretary of the Treasury, on the 2d of May, 1814, for the loan of ten millions of dollars, and of a notification issued from this office, founded upon it.

"I beg leave to request that you will cause the necessary instructions to be given to the several commissioners of loans for issuing the additional stock, *conformably to the opinion of the Attorney General*, and to the said notification"—(Stanton's Rep., 24.)

After this order was issued by the Secretary of the Treasury, the interposition of the President, who at that time was Mr. Madison, was sought by the parties interested in the loan. And the result was, that another order was issued at the earliest moment, directing a suspension of the former order of the Secretary. It was dated February 21, and was as follows:

"Mr. Dallas, late on Saturday, directed the measure for completing the execution of the contract relating to the ten million loan *to be suspended.*"

"The Comptroller is requested not to issue the instructions to the commissioners of loans until further advised on the subject."—(Stanton's Rep., 25.)

It does not appear whether this order was the act of the President or the Secretary; nor is it important. It was an *executive* order, the result, in all probability, of a conference between the President, Secre-

tary, and Attorney General. And in that light alone is it to be now considered.

It shows that when a just view of the rights of the creditors of the government under the $10,000,000 loan was presented to the President and Secretary of the Treasury, they were not satisfied to adopt the opinion of the Attorney General to the extent of considering the contract, after issuing the new stock, as absolute and no longer executory. It is quite evident that they must have seen how unjust it would have been, when the condition of the contract was, that they should have the benefit of the loan of "*any part*" of the $25,000,000, to cut them off with the benefit only of the loan of $16,000,000, and thus attach a limitation to the contract not in contemplation by either party at the time it was made. I think, too, it is a fair inference that, upon examination, it was found that the mind of the Attorney General when he gave his opinion was confined simply to the rights of the parties arising out of the $6,000,000 loan, without any reference whatsoever to *future* loans. Whether this be so or not, we have the most satisfactory evidence that so far as his opinion denied that the condition specified in the letter of the Secretary of the Treasury of May 2, 1814, attached to the *whole* or "*any part*" of the $25,000,000 loan, it was *not adopted*. And that is the chief and most important fact with which we have now to do. It is established by the letter of the Secretary of November 22, 1814, to the Acting Comptroller, as follows:

"Of the Attorney General's opinion, and the views submitted to the President, you have copies.

"It is only necessary to add, that all the subscribers to the ten million loan are placed on the same footing with respect to the instalments actually paid; that the Attorney General's opinion is to be carried into effect, so far as respects the persons entitled to the supplemental stock; but that *it is not deemed proper to insist upon a release* before the supplemental stock is delivered. In this last respect the government will act upon its rights, *without claiming any concession from the creditors which might hereafter be considered a sacrifice on their part.*"—(Stanton's Rep., 25.)

We must understand the expression—"*the government will act upon its rights*"—as meaning simply that it would discharge the obligation *then* resting upon it, arising out of the $6,000,000 loan, but that it would decline to decide the question how far it would afterwards admit any liability arising out of any *future* loan. That would be left for decision whenever it should occur. And, in this view, it was a proper determination; for there was no obligation to decide upon the effect of another loan until it was made. That the Secretary so understood himself is evident from what immediately follows—to the effect that no concession from the creditors would be required that would amount to a sacrifice on their part. A release would have been a concession on the part of the creditors that the matter was finally settled; but as the Secretary, after he abandoned the ground assumed by the Attorney General, did not intend to exact this from them, he decided that it was "not deemed proper to insist upon a release." Therefore, the stock then decided to be issued, he intended should be received as so much paid upon account, leaving future questions to be decided as they should occur; because, to require "any concession from the creditors" at that time, which should discharge the government from a liability depending upon the hap-

pening of a *future* event, would be "considered a sacrifice on their part." This is the just and fair import of the Secretary's language. If there were any doubt about it, another letter from him to the Acting Comptroller, also dated November 22, 1814, would remove it. In this letter he says:

"I have just received your second note of this day's date, relative to the execution of the contracts for the ten million loan.

"Pursuing the principle that the construction given to the contracts by the Attorney General is to be carried into effect, *without impairing the rights or embarrassing the remedies of the creditors*—I mean that the supplemental stock shall issue in such form and manner as will, on the one hand, avoid any appearance of acknowledging, at the treasury, that the contracts remain open, and, on the other hand, *leave the creditors every proper facility to establish hereafter the identity of the supplemental stock, and its connexion with the ten million loan.*

"Although I am not yet, perhaps, master of all the details of office, I presume the best mode of accomplishing the object which I have stated will be to leave the certificate of original stock as it now stands, and issue a new certificate for the supplemental stock only"—(Stanton's Rep, 26.)

Here the idea conveyed by his first letter of November 22 to the Comptroller is again expressed in stronger terms. In effect he concedes that the creditors would have "*rights*" and "*remedies*" arising in the future, and these he will not impair or embarrass. He did not commit the government by deciding them *then*, because there was no necessity for it, but left the creditors to have them decided when a proper case should be presented. And he gave every facility for making such a case by issuing new certificates for the supplemental stock, so as to distinguish them from the original certificates, and thus furnish the means of knowing how much had been paid over and above the original certificates. There could be no other object in issuing a second lot of certificates; for if the settlement had been designed by the Secretary as *final*, he would have required the original certificates to be surrendered, and the new ones issued for the whole amount of both the original and supplemental stock, so as not to distinguish the one from the other.

It is apparent, therefore, that the Secretary of the Treasury intended the new stock to be a payment to the creditors upon account merely, leaving them to show thereafter, if they could, not only that subsequent loans were made upon better terms, but that they had not even received, if such should turn out to be the fact, the full benefit of the terms upon which the $6,000,000 were borrowed. If *receipts* had been required of them, specifying that the payments were made in full, they would have been only *prima facie* evidence of such payments: this is a well-settled principle of law. They were, however, not only not required, *but expressly waived*, and this waiver amounts to an acknowledgment that the settlement was not in full. The case is, therefore, now open for thorough examination, as would be a similar transaction between individuals, so that whatever amount shall be found due, upon a full and final settlement, may be awarded.

The Secretary of the Treasury, in a notice to the creditors, dated November 30, 1814, stated the amount of supplemental stock to which the holders of the original stock were entitled, to be "*ten dollars on every hundred dollars* of stock (then) held," with *interest from the date of the original stock*.—(Stanton's Rep., 26, 27.) As this was given because the loan of $6,000,000 was made upon terms more favorable to the lenders than the $10,000,000 loan, it therefore follows:

First, That if "*ten* dollars" of new stock was issued for every "*hundred* dollars" of original stock, when, in fact, the amount was not equal to the real difference, then the creditors are now entitled to whatever sum may be necessary to make up that difference; and

Second, That if another loan was made subsequent to the $6,000,000 loan, or as a part of it, on terms more favorable to the holders of the original stock than the $10,000,000 loan, they are entitled, in lieu of the former, to whatsoever sum may make up the difference between such loan and that of the 2d May, 1814, less the amount of the new certificates of stock; and,

Third, That they are entitled, in either case, to *interest* upon whatever amount may be thus found to be due, from the *date of the original stock.*

By the report of the Secretary of the Treasury, dated December 6, 1815, it appears, that

"The amount of the funded debt, contracted on account of the late war, on the 30th of September, 1815, may be stated at the sum of $63,144,972 50.

"4th. In six per cent. stock of 1814, (which arose from loans in parts of a sum of $25,000,000, called the $10,000,000 loan and the $6,000,000 loan,) authorized by the act of the 24th of March, 1814, obtained at different rates, and not reimbursable before 1827, to wit:

"$12,292,888 90	at 80 per cent.,	stock.....	$15,366,111 21
140,810 00	at 85 "	"	165,658 82
43,222 22	at 90$\frac{3}{4}$ "	"	47,627 79
74,590 75	at 90$\frac{1}{2}$ "	"	82,420 72
12,551,511 87			15,661,818 54

(9 Am. State Papers, p. 7.)

Here the statement is distinctly made by the Secretary of the Treasury, Mr. Dallas, that of the amounts received for parts of the $25,000,000 loan, $140,810 was sold at $85 for $100 of stock. This was the only stock sold at that rate, either by Mr. Dallas or Mr. Campbell, and it is important that we should ascertain to whom this was sold, so that we may know whether the money paid for it was equal to or of less value than specie.

In 1814 the Bank of Columbia, located in the city of Washington, established an office in the treasury buildings, for the convenience of the treasury, and Richard Smith, esq., still a resident of Washington, was appointed to conduct its business. His deposition has been taken in the case of Ward, Little & Halleck, assignees of Jacob Barker, *vs.* The United States, pending in this court, and a certificate copy of it is filed in this case. He says:

"On the morning of the day when the news of the treaty of peace was received, which was some time about February, 1815, I applied to the treasury, at the request of the Farmers' Bank of Annapolis, to subscribe for United States stock to the amount of $25,000, at 85 per cent., payable in the notes of the banks of the District of Columbia. The Secretary was not in his office; Mr. Sholden, the acting chief clerk, received the offer, but could not give the answer in the absence of the Secretary. I called on the following day, and received from Mr. Dallas the answer that I should have the stock. It was accordingly taken at that rate. I then asked the Secretary whether he would let me have another $10,000 at the same rate. His answer was that he had rather more of the District bank notes than he could use, but that if I could pay in the notes of the Baltimore banks, I should have it. Not being prepared to answer at the moment, I called again on the same day, to take the stock, when Mr. Dallas had changed his mind, declining to sell at that rate."

Again:

"That he purchased of the treasury of the United States, the day after the news of peace was received, in 1815, six per cent. United States stock, paying therefor, in the notes of the banks of the District of Columbia, $85 for $100 of stock; the difference between the value of such bank notes was then, or had been shortly before, 24 per cent. in favor of specie."

It is a part of the public history of the country that the treaty of peace between Great Britain and this country was signed by the commissioners of both parties, at Ghent, on the 24th of December, 1814; and we learn from the "National Intelligencer" of February 15, 1814, that on the day before—that is, February 14—it was delivered to the Secretary of State, in Washington, and by him laid immediately before the President. We are enabled thus to ascertain that the purchase of stock by Mr. Smith, on account of the Farmers' Bank of Annapolis, was made on the 15th of February, 1815.

It is evident, then, that the $25,000 paid by Mr. Smith was part of the $140,810, reported by the Secretary of the Treasury as having been paid for stock at $85 for $100 of stock. If it were not so, the correspondence in price between the Secretary and Mr. Smith would not be likely to occur.

It is evident, also, that the $140,810, and, consequently, that the $25,000 was part of the $6,000,000 loan, and therefore part of the $25,000,000 loan. This is the substance of the statement made by the Secretary in his report of December 16, 1815.

And it is a fact distinctly stated by Mr. Smith, that the $25,000 paid by him, on behalf of the *Farmers' Bank of Annapolis*, was paid *in the notes of the banks of the District of Columbia*, which were at that time 24 *per cent. below the value of specie.*

It is much to be regretted that we are left to inference for any part of the facts in this case, but, at the same time, it is fortunate that there are so few of them thus to be arrived at. There is, indeed, but one, which is the inference I have just drawn, that the $25,000 paid by Mr. Smith was part of the $140,810 reported by the Secretary of the Treasury as part of the $25,000,000 loan. And this is a fair and irresistible inference, to which, from all the facts, we are entitled against the government. It is not the fault of the petitioner, nor of the Mechanics' Bank, that the government of the United States has not in its possession the means of showing precisely the several amounts of loans, and the times when and the persons from whom they were made. If this circumstance is to be taken against either of the parties, it should be the government. But without insisting upon that, I may well insist that it justifies the inference I have drawn.

The United States, therefore, having borrowed this $25,000 of the *Farmers' Bank of Annapolis*, and having issued six per cent. stock therefor, at the rate of $100 of stock for every $85 of *bank paper*, worth only 76 *cents to the dollar;* it follows that the lenders of the $10,000,000 loan are entitled to the benefit of this loan, or to the difference, with interest, between what it would have produced to them if their loan had been made upon its terms and what they actually received of original and supplemental stock.

By the statement of Dennis A. Smith, made under oath, in the case of the United States *vs.* Jacob Barker, pending in 1820 in the circuit

court of the United States for the southern district of New York, it appears that on or about the 20th of August, 1814, he loaned the Secretary of the Treasury $1,800,000, part of the $25,000,000, for which he received "six per cent. stock to the amount of $100 for each $80 paid," and that the same was paid "*in paper of the banks of the District of Columbia and of the banks of the city of Baltimore,*" and that these banks did *not redeem their notes in specie.*—(Stanton's Rep., 22, 23.)

Mr. Smith stated subsequently, (March 11, 1815,) in a deposition on file in the case of Ward *et al. vs.* The United States, in this court, that the bank notes paid by him "to the Secretary of the Treasury were at least *twenty per cent. below the par value of silver and gold,* and that fact was well known to the Secretary of the Treasury, and was a matter of notoriety."

I have already shown what was the general condition of the currency about the time this $25,000 loan was made, by the extract from the letter of Mr. Dallas to Mr. Eppes, dated October 17, 1814, (page —,) and that from the circular of Mr. Dallas, dated November 25, 1814, (page —.)

There is much other evidence to the same effect in the public history of the country, and in the official statements of public officers. In a report made to the House of Representatives by Mr. Eppes, dated October 10, 1814, it was stated that—

"The want of some medium which, resting on a firm and solid basis, may unite public confidence, and have a general instead of a local circulation, is now universally acknowledged. The stoppage of specie payments by the principal banks of the middle States has embarrassed greatly the operations of the treasury, and, by confining the circulation of notes to the limits of the States within which they are issued, has deprived the government of all the facilities, in the remittance of money, which was afforded while public confidence gave to bank notes a general circulation. The notes of New York and Philadelphia will not be received in Boston. The notes of Baltimore or the District of Columbia will not answer for payments in Philadelphia."—(American State Papers, vol. 8, p. 854.)

Mr. Dallas, still later, as Secretary of the Treasury, in a letter addressed to the Hon. William Lowndes, said:

"When he arrived at Washington, the treasury was suffering under every kind of embarrassment * * * * * *

"The means consi ted, first, of the fragment of an authority to borrow money, when nobody was disposed to lend, and to issue treasury notes, which none but necessitous creditors, or contractors in distress, or commissaries, quartermasters, and navy agents, acting, as it were, officially, seemed willing to accept; secondly, of the amount of bank credits, scattered throughout the United States, and principally in the southern and western banks, which had been rendered, in a great degree, unless, by the stoppage of payments in specie, and the consequent impracticability of transferring the public funds from one place to meet the public engagements in another place," &c.—(American State Papers, vol. 8, p. 872.)

The Secretary of the Treasury, in a letter addressed to Mr. Eppes, referred to "an estimate which was formed on the 4th of October, 1814," and said:

"It is believed that this estimate, founded upon official facts and experience, would have been substantially realized, if the banks had not suddenly determined to suspend their payments in specie," &c.—(American State Papers, vol. 8, p. 878.)

And the effect of the suspension of specie payments is more fully shown by the following extract from a communication made to Congress by a committee of five of the banks of the city of New York, viz:

"It is well known that a great and constant drain of the precious metals from the United States has existed for a long time past, while supplies of them have been cut off by the war; and that the alarms necessarily existing during a war have induced many timid and cautious

persons to hoard specie; the consequence of which has been to render a suspension of specie payments necessary to the banks in Baltimore, Philadelphia, and New York, and in various other parts of the United States, notwithstanding the utmost care has been taken to restrain the circulation of notes within moderate bounds; yet, it has been found impossible to prevent a difference in value between specie and the notes of the banks in the best credit. The difference is now, in the city of New York, from twelve to fifteen per cent., and in other places still greater."—(American State Papers, vol. 8, p. 876.)

Mr. Dallas, Secretary of the Treasury, in a letter to the chairman of the Committee of Claims, December 19, 1814, says:

"It is known that there is no gold and silver, and that bank notes are of a limited circulation, while the government bank credits are of a limited amount. Stock and treasury notes are, consequently, the present means of payment proposed by the treasury, generally speaking."—(American State Papers, vol. 8, p. 883.)

Besides furnishing additional evidence of the general derangement of the currency at that time, the fact, in corroboration of Mr. Smith's statement, that the government *was borrowing bank notes at their nominal value*, is shown by a letter addressed by the Secretary of the Treasury, Mr. Dallas, to Mr. Eppes, dated November 23, 1814. In this letter he says:

"The Secretary of War, having occasion for money to pay the militia who marched from Tennessee against the Creek Indians, obtained a loan *in bank notes*, for that purpose, *from the Bank of Chillicothe*. Some of these notes have since been offered in payment of taxes to the collectors of the internal duties in the State of Tennessee; but, as the banks at Tennessee o o refuse to receive the same as cash deposits, the collectors, in their turn, refuse to receive them as cash for taxes."

"The government has passed the notes at their nominal value; but it is equally true that *the government is bound to pay for them to the bank according to their nominal value.*"—(American State Papers, vol 8, p. 874.)

Here it is distinctly stated that the government was engaged in borrowing *bank notes* and paying them out at their *nominal value*, and that, notwithstanding their depreciation below the value of specie. It is also stated with equal distinctness, that the government was bound to pay the banks for them "according to their *nominal value*," and not at their real worth in the money market.

Mr. Guthrie, late Secretary of the Treasury, in his report for 1854–'55, on the finances, referring to the foregoing condition of monetary affairs, said:

"1814. o o In August the banks of New York, Philadelphia, and Baltimore suspended specie payments, *and the suspension became general throughout the Union*, with the exception of the banks of New England. Through the residue of the year *specie bore a premium of from 14 to 20 per cent.* in the bank notes of the large cities of the middle States."

"1815. The news of peace was received in February, only six months after the suspension of specie payments, and specie, which had been at *New York at 15 per cent. premium in January*, fell, immediately, to 2 per cent. But the banks did not resume specie payments, and instead of diminishing their issues, increased them, *being encouraged therein by the United States government*, which continued to receive their inconvertible paper in payment of public dues. From June to December specie was, at New York, Philadelphia, and Baltimore, at various rates of premium, *from 9 to 22½ per cent.*"—(Mr. Secretary Guthrie's Report on the Finances, 1854–'55. Ex. Doc. No. 2, 1st sess. 34th Con, p. 57.)

We have thus abundant evidence in corroboration of the statement of Mr. Richard Smith, that when he made the loan of $25,000 on account of the *Farmer's Bank of Annapolis, the bank notes* in which the loan was paid to the government, were 24 *per cent. discount.* And this evidence is of the most conclusive character, because it is entirely derived from the public records of the government.

But we have still further evidence to the same point—besides show-

ing, as it does, still *another loan*, of a part of the $25,000,000, in depreciated bank paper. It is found in the evidence of Mr. Dennis A. Smith, which was taken to be used in the district court of the United States for the southern district of New York, in a suit by the United States *vs.* Jacob Baker, a copy of which is now on file in this court, in the case of Ward and others, assignees of Barker *vs.* The United States. Mr. Smith swears:

"That on or about the 30th of August, 1844, he contracted with the then Secretary of the Treasury to loan to the United States the sum of $1,800,000, being part of the $25,000,000 authorized to be borrowed by the act of Congress of the 24th of March, 1814; for which sum so to be loaned by the deponent to the United States, he was to receive six per cent stock to the amount of *one hundred dollars* for each *eighty dollars* paid; and it was further understood and agreed, between the Secretary of the Treasury and him, (deponent,) that he (deponent) should pay for the same *in paper of the banks of the District of Columbia* and of the *banks of the city of Baltimore*, which banks received their own paper at par; and it was further agreed that on producing the proper evidence of the payment of the said sum of $1,800,000 to the commissioner of loans of the United States, funded stock, to the amount of $100, bearing an interest of six per cent. per annum, should issue for each $80 *of the paper of the said banks* so paid by deponent; that in pursuance of such understanding and agreement, the deponent did so pay, *in the paper of said banks* the $1,800,000 aforesaid, and did receive therefor funded stock to the amount of $2,250,000; that the said banks, in whose paper this deponent paid the said $1,800,000, *did not*, at the time deponent so paid, *redeem their notes in specie.*"—(Stanton's Rep, 23.)

On the 11th of March 1815, the testimony of Mr. D. A. Smith was taken before a notary in the city of Baltimore, for the purpose of perpetuation, and the statement of the notary is also on file in this court in the case of the assignees of Barker *vs.* The United States. Besides the facts stated in the above deposition, he thus states:

"That the *bank notes* paid by deponent to the Secretary of the Treasury were at least *twenty per cent. below the par value of silver and gold*, and that fact was *well known to the Secretary of the Treasury*, and was a matter of notoriety."—(See Official Statement of John Gill, notary public)

Thus, besides the direct evidence of the loan of Mr. Richard Smith, on behalf of the *Farmers' Bank of Annapolis*, in *depreciated bank paper*, we have equally direct evidence of the loan of Mr. Dennis A. Smith, also in *depreciated bank paper*, and of the loan of the Secretary of the Treasury from the bank in Chilicothe; each of these loans being part those who took part of the $10,000,000 loan were entitled to the benefit of the $25,000,000 loan. Could any proposition be clearer than that of either of these if they were upon better terms than their own? It appears to my mind to be too clear for argument, unless we abandon the plain import of the condition attached to the loan by the Secretary of the Treasury. That, certainly, the government will not ask. There is every reason why it should rather desire a strict compliance with it, even at this distance of time from the period of the transaction. The money was advanced to the government when it was wholly without means to carry on the war and to sustain its own credit. Cut off from the possibility of assistance by European loans, it was compelled, by the necessity of things, to look to its own citizens, at home, for the supply of necessary means. They came forward liberally and patriotically, notwithstanding the motive of profit also governed them, and relieved its wants. It would be a reproach to the government to quibble now, after it has enjoyed the rich fruits of these investments so long, about the meaning of terms which, in transactions between

individuals, would be held to be so plain as to admit of no controversy whatever.

Assuming the proposition to be established, then, that those to whom the certificates for the $10,000,000 loan were issued are entitled to the benefit of whichsoever of these last loans may be found to be most advantageous to them, it is necessary to examine how far the evidence shows Mr. Irvin, the petitioner in this case, to be in a condition to demand, now, that this benefit be extended to him.

I have shown that the Mechanics' Bank of New York was a chartered institution under the laws of New York, and that, at the time of these loans, it was doing business in the city of New York under a charter which conferred upon it full power to loan money.—(Page -.)

By reference to the properly authenticated copy of the proceedings of the board of directors of said bank, which is in evidence, it will be seen that Whitehead Fish was elected cashier of said bank in April, 1810, and that he held that office until January, 1819, when he resigned.

It has also been proven from the public records that Whitehead Fish was amongst the persons who made proposals for part of the $10,000,000 loan, to the amount of $250,000, and that a letter, similar to that of May 2, 1814, to Mr. Baker, was also written to him, notifying him that his proposition to loan that amount was accepted by the Secretary of the Treasury.—(A. S P., vol. 2, 846.)

There is on file amongst the papers a letter from the present Register of the Treasury, showing the fact that the amount furnished the government by Whitehead Fish, as exhibited by the books in his office, was $2,717,500. This sum must have included both the loan and disbursements made for the government, as the Mechanics' Bank was at that time one of the government deposit banks. The precise manner in which so large a sum was furnished it would be difficult now to ascertain, inasmuch as the Register in this same letter states that the book in which the account with the bank was kept was burnt at the burning of the treasury building in 1814.—(See Register Bigger's letter) But this inquiry is not material to the present case, as it is in the power of the petitioner in this case to show how much of the money of the bank was actually invested in this loan.

It was no less the duty of the government than it was of the bank to keep a full and correct record of this transaction, so that at all times accurate evidence of the fact might be had. At the time such a record was doubtless made, and would have been preserved but for its accidental destruction by fire. This was neither the fault of the government nor of the bank, and should prejudice neither. Perhaps, if it had not occurred, this court would have considered the account kept in the Treasury Department as the best evidence. Inasmuch, however, as it has occasioned the loss of that account, the next best evidence, *ex necessitate*, is the record of the transaction as kept by the bank, made up at the time.

The deposition of William Sharp has been regularly taken in this case, and is on file. He swears that he has been in the employment of the Mechanics' Bank from 1848 to 1855, and that by reference to the deposit-book of the bank he finds:

"That, on the 26th of May, 1814, there was placed to the credit of T. T. Tucker, Treasurer of the United States, by the Mechanics' Bank, the sum of $115,000; and on the 29th of June, 1814, there was placed to the credit of T. T. Tucker, Treasurer, by the Mechanics' Bank, the sum of $1,124,550."

By reference to the ledger he finds that—

"On the 26th of May, 1814, the bank loaned to the United States the sum of $38,450, which sum is included in and makes part of the before-mentioned sum of $115,000; and that, on the 29th day of June, 1814, the Mechanics' Bank loaned to the United States the sum of $115,350, which sum is included in and makes part of the aforesaid sum of $1,124,550."

We see then that the loans by the Mechanics' Bank to the United States, as part of the $10,000,000 loan, were as follows, to wit:

1814.	May 26	$38,450
1814.	June 29	115,350
	Total amount	153,800

The whole is more accurately presented, including the fact of the *cash* payment by the bank for the use of the United States, and the reception of the stock representing the amount and date of each loan, by a table prepared by Mr. Sharp from the books of the bank. It is filed with his deposition as exhibit B, as follows:

Loan to the United States.

Dr.		Cr.	
1814—May 26. To cash subscription	$38,450	1814—Sept 10. By cash	$8,800
June 29. To cash subscription	115,350	1815—April 18. By cash	145,000
	153,800		153,800

By comparing the dates of these loans, as thus exhibited by the books of the bank, with the date of the contract between the Secretary of the Treasury and Barker and others, and with the dates of other facts already noticed, we shall have no difficulty in concluding that this loan of $153,800, by Whitehead Fish, was part of his loan of $250,000, and made by him on behalf of the Mechanics' Bank, of which he was at the time the cashier.

Reference to the acts of the New York legislature, already referred to, (page —,) will show that the charter of the Mechanics' Bank finally expired January 1, 1855. It is shown by the testimony of Mr. Sharp, that the petitioner, Mr. Irvin, was one of the directors of the bank, and that, shortly before the expiration of the charter, the president and directors made an assignment in writing, whereby Mr. Irvin, Robert Kelly, and F. W. Edmonds were appointed trustees to wind up the affairs of the bank; that Mr. Kelly is dead, Mr. Edmonds has ceased to act, and that he is the sole trustee. An authenticated copy of the deed of assignment is on file.

Thus it is shown that the title to whatever may now be due to the late Mechanics' Bank, on account of the aforesaid loan, is in Mr. Irvin, the petitioner, and that he has the right to demand it of the United States. That amount may be easily ascertained.

When the Treasury Department, in February, 1815, borrowed a part of the $25,000,000 at the *nominal rate* of $85 in *bank notes* for $100 in public stock, the *real value* of the $85 in bank notes was but $64 60. Consequently the Mechanics' Bank was entitled to a new accounting and settlement for its loan of $153,800, and to have stock for that sum at the rate of $100 in stock for each $64 60 thereof. This would have given the bank for its loans, stock to the amount of $238,080 49. The original sum which it received in stock, was $174,712 72, to which was afterwards added the supplemental stock for the 10 per cent., $17,477 28; making the whole sum $192,250. Deduct this sum from the $238,080 49, and it leaves due to the bank in public stock the sum of $45,830 49, which sum, with interest at the rate of 6 per cent., from July 10, 1814, until paid, constitutes the amount which Mr. Irvin has the right to demand of the United States. This money has been withheld from the bank under circumstances unavoidable to it, and the contract stipulates that the United States shall pay interest. On the 10th day of July, 1858, before which time in no event will it be paid, the government will have retained it for *forty-four* years, during all which time the bank has had no remedy. The interest for that time is $120,992 08, which, added to the principal, will make due at that time the sum of $166,822 57—an amount which may seem large at first blush, but which can never remunerate those who have the right to the proceeds of the original stock, for this long delay.

In pursuing in detail the facts of this case, I have omitted to notice, hitherto, the principles of law which are necessary to be considered. That I will now do, omitting many authorities referred to in other briefs.

I. In order to arrive at the true meaning of a contract and the real intention of the parties to it, we must look both to the conduct of the parties and cotemporaneous facts.

The government was greatly embarrassed. It was engaged in a war with the most powerful nation upon earth, which it could not prosecute without money. There was but little money in the country. What there was, was almost entirely in the eastern cities. It became absolutely necessary, therefore, for the government to offer extraordinary inducements to those who had it, in order to obtain a loan. The six per cent. interest which the public stock bore was not sufficient, unless coupled with the condition that if any better terms should be agreed on by the government with those who took "*any part*" of the loan, the same terms should be extended to the original lenders. It must be apparent that this was the intention of both the Secretary of the Treasury and the original lenders.

II. If a contract is susceptible of two interpretations, one consistent with established public policy at the time it was made, and the other not, the former construction must prevail. This rule is too obvious to need support from authority.

The policy had been established by the Secretary of the Treasury, Mr. Gallatin, in 1813, of extending the benefits of all the contracts for each entire loan authorized by law, to every and "*any part*" of that loan, and we must, therefore, conclude that Mr. Campbell in 1814 designed to pursue the same policy. This is not only inferable from the history of the transaction, but is the express meaning and import of the language of the contract.

III. The ordinary principles of law and morality which are applied to regulate the dealings of individuals, are applicable between the United States and their citizens.—(*l'er Judge Gilchrist* in *White vs. The United States.*)

In this case it cannot be denied that such a contract is shown that if it were between individuals its condition would extend to *every* part of the $25,000,000 loan.

IV. A settlement in full of an account, even where a receipt is given, is only *prima facie* evidence, and may be shown to be erroneous—as that a particular charge is omitted, &c.

V. The act of the government in declining to take a receipt in full, is a waiver of the right to insist *now* that the payment of the ten per cent. stock should be so considered.

VI. The stipulations of the Secretary of the Treasury in his first letter of November 22, 1814, that the remedies of the creditors should not be embarrassed or impaired by the reception of the ten per cent. stock, and that they should be left to every proper facility to establish their rights at any time thereafter, constitute an agreement by the government that the ten per cent. stock shall not be considered as a payment in full. Therefore the government is estopped from now setting up this pretence.

VII. The stipulation of the Secretary of the Treasury in his second letter of November 22, 1814, that if the creditors would receive the ten per cent. stock, the government would not claim any concession from them that might thereafter be "considered a sacrifice on their part," is an agreement by the government that the receipt of this stock shall not be considered in full. Therefore the government is estopped from now setting up this pretence.

VIII. The ten per cent. stock having been paid upon the express condition that no concession of any right of the creditors should be required, the agreement was implied, on the part of the government, that it should be paid only upon account—leaving the final settlement to be determined upon by subsequent loans, if there were any, of "*any* part of the $25,000,000."

IX. If it were true that the issuance of the ten per cent. stock was, at the time, intended both by the Secretary of the Treasury and the creditors as a settlement in full, yet if there was a *mistake* as to the just and real amount due upon the contract, there may be a recovery for whatever amount was by that means omitted; in such cases, where the controversy is between individuals and a receipt has passed, a court of law will disregard it, and a court of chancery will decree that it shall be delivered up to be cancelled.

Where a man from an erroneous opinion of his rights releases them, or pays money, or agrees to perform any act, he is entitled to relief

equally as if he had acted under a mistake of fact. The two cases are alike. And this is the doctrine established by this court in the case of *Sturges, Bennett & Co.*, vs. *The United States*. In that case the opinion of Judge Scarburgh embodies all the law on the subject of the payments by mistake or under erroneous impressions of law or fact.

X. The law presumes that the contract to pay in bank notes was to pay what was their value at the time of payment.—(Fry *vs.* Rousseau, 3 McLean, 106. Hosbrook & Leaman *vs.* Palmer & Clark, 2 McLean, 10. Moody *vs.* Makurin, 4 N. H , 296)

At the date of the contract with Whitehead Fish, the notes of the Mechanics' Bank were of equal value with specie, therefore the United States received them at that value. At the time of the contracts with Dennis A. Smith and Richard Smith, the value of the notes in which they paid their loan was greatly *below* the value of specie, therefore they were available only at their depreciated value.

XI. The contract, by its express terms, gave to the holders of the original certificates the benefit of the difference between their payment of paper equivalent to specie, and the payments by others of paper of less value. This was part of the consideration of their loans on the part of the government, amounting, as it did, to a stipulation that the government would not diminish the value of their stock by taking a loan at lower rates, or, if it did, that they should have the benefit of it.

The government denies that it received depreciated paper.—(See Letters of Secretaries Guthrie and Woodbury, Ho. Rep., 140, 2d sess. 33d Cong., pages 6 and 9, where this deniel is left to be implied from its not being conceded.) But we have the direct proof of Dennis A. Smith and Richard Smith, and the admission of the Secretary of the Treasury in relation to the loan from the Chilicothe Bank, all to the effect that depreciated paper *was* received.

Upon examining the brief of the solicitor for the government, filed in the case of Ward and others, assignee of Barker *vs.* The United States, I find the inquiry asked in regard to that case, "how does it violate the contract with Barker to allege that depreciated paper was accepted from Smith and others in payment for stock?"

The solicitor then states a case to show that a contract cannot be thus violated which is altogether unlike this, because it is a mere sale of property for a stipulated price. But here the express condition of the contract is, that the terms of *other* loans shall be extended to that of May 2, 1814. If they are not so extended, the contract is violated of course.

It is objected by him that because Barker knew of loans upon better terms at the time he received the supplemental stock, and made no objection, he is, therefore, concluded by the settlement. This mode of reasoning I have answered already, but it cannot apply in this case. The loan by Richard Smith of the $25,000 on account of the Farmers' Bank of Annapolis, did not take place until *after* the supplemental stock had been issued.

No argument in this case can be justly drawn, from the length of time that has elapsed, in favor of the government, or adverse to the Mechanics' Bank. The true question is, what would be the rights of the parties to the original contract, occupying the relations to each

other they did, at the time of the last loan of "any part" of the $25,000,000? If they were then entitled to additional stock over and above the ten per cent. stock, they are still so. And, as I think I have shown they were, I insist that the petitioner is justly entitled to recover against the United States the sum, principal and interest, which I have already indicated.

R. W. THOMPSON,
Attorney for Petitioner.

IN THE COURT OF CLAIMS.

RICHARD IRVIN, Trustee, &c., *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON RE-ARGUMENT.

Claim for additional stock under the law of March 24, 1814, *on the ground that loans were given to other persons upon terms more advantageous than those under which the Mechanics' Bank of the city of New York took a portion of said loan.*

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That on the 24th of March, 1814, Congress passed a law (3 U. S. L., 111) authorizing a loan of $25,000,000, and the issuing certificates of stock therefor, and the employment of *agents* for the purpose of obtaining subscriptions thereto, and paying the quarter of one per cent. as compensation for their agency, pledging certain revenues for the redemption therefor.

Second. That under this law the Secretary of the Treasury advertised for proposals for $10,000,000 of said loan, in which he said:

"If proposals differing in terms from one another should be accepted, the option will be allowed to any person whose proposals may be accepted, of taking the terms allowed to any other person whose proposals may be accepted."—(State Papers, Finance 2, p. 845.)

Third. Jacob Barker wrote to the Secretary, April 30, 1814, offering to take $5,000,000, adding, "it being understood and agreed, that if terms more favorable to the loaners be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms are to be extended to this contract."—(Barker's letter, 2 vol. Finance, 845.)

Fourth. The Secretary of the Treasury, on the 2d of May, 1814, wrote Barker that the loan had been concluded upon the following terms:

"Eighty-eight dollars in money for each one hundred dollars in stock; and the United States engage, if any part of the sum of twenty-five millions of dollars authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons

who may then hold the stock, or any part of it, issued for the present loan of ten millions."—(2 Finance, p. 845.)

Barker was first notified that his subscription of five millions of dollars had been accepted, and he was requested to pay the same into the banks named in his offer.—(2 Finance, p. 846.)

Fifth. Whitehead Fish, of New York, is believed to have subscribed for a portion of said loan, because it is stated in said volume, at the last mentioned page, that—

"A similar letter was addressed to the persons undermentioned, who made proposals for the sums set against their names respectively:

* * * * * * * * *

"Whitehead Fish, New York, $250,000. * * * Total of all the (then) subscriptions, $9,229,056.

"There was subsequently offered and accepted, proposals by the undermentioned persons for the following sums, viz:

"William Whann, Washington	$190,000 00
"William Whann, Washington	200,000 00
"Robert Jennings, Richmond, Virginia	176,000 00
	566,000 00"

(2 Finance, p. 846.)

Sixth. On the 25th of July, 1814, the Secretary of the Treasury issued proposals for a further loan, under the same law, of $6,000,000; but the provisions of the former notice allowing the subscribers the benefit of the terms accepted from others was omitted in this notice. Proposals were to be received until the 22d of August.—(2 Finance, pp. 846, 847.)

Seventh. On the 31st of August, 1814, the offer of Dennis A. Smith, dated the 22d, to take $1,800,000, was accepted, at the rate of $80 for $100 of stock, as were the offers of others, making the whole amount then accepted $2,723,300
Subsequent proposals added 207,000

2,930,300

(2 Finance, p. 847.)

Eighth. In consequence of the acceptance of the last-mentioned loan of $80 in money for $100 in United States stock, the persons holding the certificates of stock issued under the bids for the $10,000,000 become entitled to 10 per cent. additional stock.

Ninth. A question arose whether this 10 per cent. should be issued to those who held the stock so first issued when this last loan *was taken*, or whether the same ought to be issued to those who, owning, should present it and demand the issue of this 10 per cent., although they might have acquired it after said loan was taken. That the government determined to issue it to the latter, and so notified the public.—(*Seaton's affidavit*—Copying notice.)

Mr. Barker protested that it ought to be issued to those who held

the stock on the day of the acceptance of the bids for the loan—that is, that it attached to the holder personally and not to the stock itself.

Tenth. The Mechanics' Bank was an agent of the Treasury Department which received deposits on account of this loan, and held the certificates of stock first issued from the time of issuance until after said loan of August was taken, and actually received the 10 per cent. additional stock on all the stock it held —(*Admissions of claimant's* counsel, and shown by the evidence in the case.)

Eleventh. The Mechanics' Bank was chartered in 1811 by the legislature of the State of New York, and by the terms of its charter the powers of the corporation were vested in a board of directors, and it was prohibited from dealing in United States stocks, except that it might sell them when pledged to the bank by way of security for the payment of a debt.—(*See charter.*)

Twelfth. That the Mechanics' Bank opened an account on their books with a United States loan, charging it with cash subscription to the amount of $153,800, and crediting it with cash at a subsequent date by the same amount, $153,800, thus balancing the account; and from the testimony of Sharp it appears that the bank in this matter acted as an *agent* of the United States, and not as a subscribing party.—(*Sharp's deposition, exhibit B.*)

Sharp testifies that by the books of the late Mechanics' Bank it appears that the bank loaned the United States, in May and June, 1814, the sum of $115,350, and that—

"On further examination of the books of the late Mechanics' Bank, I find the bank reimbursed itself for the money so loaned by the sale of United States stocks, viz: on the 10th of September, 1814, to the amount of ($8,800) eight thousand eight hundred dollars, and on the 18th of April, 1815, to the amount of one hundred and forty-five thousand dollars, ($145,000,) a statement of which I hand to the commissioner," marked B.

From this it may be inferred that the transaction assumed the form of an agency by the bank for the United States to avoid the prohibitions of the charter forbidding it to deal in United States stocks.

Thirteenth. On the last day of December, 1814, there stood to the credit of the bank on the books of the treasury, of the first $10,000,000—

Of the twenty-five million loan	$188,317 68
And *supplemental* stock of that loan	16,477 27
In all	204,794 95

(*Register's certificate*, May 26, 1858.)

Fourteenth. That there was paid into the treasury, in 1814, by Whitehead Fish, on account of the $10,000,000 of the loan of $25,000,000, the sum of (but from whom received not stated) $2,717,500. It probably covered a portion of Barker's payment, as Barker paid his subscription into said bank.—(*Register's certificate* of May 13, 1857.)

Fifteenth. That Congress, on the 15th day of November, 1814, passed a law authorizing a loan of $3,000,000, in which it was pro-

vided (3, U. S. L., pp. 144, 145, §§ 1 and 18) "that it shall be lawful for any of the banks of the District of Columbia to lend any part of the sum authorized to be borrowed by virtue of this act, anything in any of their charters to the contrary notwithstanding."

This authorized the Secretary to borrow $3,000,000 without further resort to the twenty-five million loan.

Sixteenth. That on the 13th of February, 1815, Congress authorized another loan, (3 U. S. L., 205,) in these words:

"That the President of the United States cause to be repaired or rebuilt forthwith the President's House, Capitol, and public offices, on their present sites in the city of Washington, and that he be authorized to borrow, at an interest not to exceed six per centum per annum, from any bank or banks within the District of Columbia, or from any individual or individuals, a sum not exceeding five hundred thousand dollars, to be applied exclusively to that purpose."

Seventeenth. From these facts it appears that the Secretary of the Treasury could make loans under three acts of Congress, and under the two last he could make them of banks in the District of Columbia, which was not authorized by their charters.—(See these charters in the 1st and 2d U. S. L.)

Eighteenth. That on the 15th of February, after these two last loans were authorized and the District banks permitted to subscribe, Richard Smith contracted for $25,000 for the Mechanics' Bank of Annapolis, of some of the United States loans, but which he does not know, in money of the District banks, and that it was paid for by paying out the bills of the Bank of Columbia.—(*Smith's last deposition.*)

Nineteenth. That the Bank of Columbia, located at Georgetown, in the District, kept an office in the treasury building for receiving and paying out money for the government, which was in the charge of said Richard Smith.—(*Smith's depositions.*)

Twentieth. That District bank bills were received and paid out at par by all officers of government and contractors, and by the people generally, although those banks had suspended specie payments, and that when specie was required, it was bought as an article of merchandize, and if paid for in bank bills, they were from twelve to twenty per cent. discount.—(*Smith's depositions*)

Twenty-first. That in his report on the finances on the 22d day of June, 1815, the Secretary of the Treasury, in enumerating the sources of revenue, stated that he had received under the last above-mentioned loan laws as follows:

Under the act of November 15, 1814.....	$950 000
Under the act of February 13.....	100,000

Twenty-five thousand of the latter was received of the Bank of Columbia.

It is highly probable and reasonably certain that the United States were credited by Smith on the books kept by him for the Bank of Columbia with the sum of $25,000, and that the stock was issued to his bank, and then, on being reimbursed by the Annapolis bank, it was transferred to that bank by the Bank of Columbia.

This would account for the fact that the treasury books in the

Register's office do not show that any sum of money was received at or near that time, either of Smith or the Annapolis bank.

It is this $25,000 in the loan of 13th February, 1815, that Smith got for his principal, as is quite certain.

Twenty-one and a half. That in none of the reports of the Secretary of the Treasury, at the time of this transaction, is there any statement or suggestion that any portion of the loan of $25,000,000 had been received in depreciated funds. On the contrary, in 1835, when that question was directly put to the department, having all the facts, as far as is now shown, and all the documents now adduced in evidence before him, the Secretary answers:

"There is nothing in the records and files of this office to show that, at the time that this loan was negotiated by D. A. Smith, the District and Baltimore bills which the government agreed to receive were depreciated here."—(Secretary's letter of 27th January, 1835.)

The Comptroller's letter of the 6th of January, 1835, states: "There are no documents on file which go to show that the government knew that the District and Baltimore bills which it agreed to receive at par were depreciated at the time of the loan negotiated by D. A. Smith, on the 30th of August, 1814."

These letters negative the question put by Mr. Foster, which is quoted *verbatim* in the Comptroller's letter. If the records and files of the department could prove the fact then and now assumed, the answer of these officers would have been different.

Twenty-second. There is no evidence in this case tending to show that the bills received were not at par, and passing freely from hand to hand at that rate in all transactions, both public and private, nor any that the government lost anything whatever by receiving them at par. But the government received them just as it did for the first ten millions of this loan. It received of the Mechanics' Bank, and all other subscribers, bank bills, which were received and paid out by the government and citizens at par.

Twenty-third. There is no proof that the government agreed on the taking of any portion of the loan of twenty-five millions in bills of any bank. The only instance under any loan that bills were agreed to be received was the subscription by Richard Smith, which was not a part of that loan, but was clearly that of the 13th of February, 1815.

Twenty-fourth. If the government had agreed to receive bills of a bank at par for stock, such terms would not be more favorable to the lender than those upon which the first ten millions had been taken, because in *both cases it took evidences of debt* upon which it could have, if it had chosen so to do, enforced the payment of specie by an action.

The Richard Smith transaction was undoubtedly in the name of the Bank of Columbia, which he represented in the treasury building. It was payable, and must so have been understood by the Secretary, in the bills of that bank. That bank could have been compelled to pay specie, and therefore the terms were not more favorable to it than the terms of the former loans, which were in fact paid in bills on which the government could have sued and recovered specie if it had desired so to do.

Hence, so far as the lender was concerned, the terms were alike, and the latter not more favorable than the former. And so far as the government was concerned, it was all the same, because in both instances it took and passed the bills at par.

Twenty-fifth. The contract made with the subscribers to the ten millions had no reference to the kind of currency that the government might see fit to take and pass at par, but to the relative quantity of stock it should agree to give for money borrowed. This was clearly the understanding of the parties at the time, and no question was then raised concerning it.

Twenty-sixth. There is no evidence that the Mechanics' Bank had received its ten per cent. surplus stock before the transaction with Richard Smith, but it must have known of the loan to D. A. Smith and others, on which it demanded and received such surplus stock. It undoubtedly knew when it applied for that stock, when the banks suspended specie payments, and the rate at which specie could be purchased, but still there is no evidence or pretence that the bank, or any one else, at that time, deemed itself entitled to anything on that account, and none that any stock was by any subscriber demanded on that account, but the bank received the stock demanded, and undoubtedly did so under the full understanding that the government was giving it all that it had any right to demand. This was an interpretation of the contract made and agreed to by both parties at the time of the transaction. Such cotemporaneous construction by the parties ought to control at the present time.

Twenty-seventh. There is no evidence that to this day the bank has demanded this additional stock now claimed at the Treasury Department, where alone it can be issued.

Twenty-eighth. There is no evidence that the bank has even made a charge on its books against the United States for what is now claimed, or even made a memorandum of any such claim, or done any act in relation thereto.

LEGAL PROPOSITIONS.

FIRST. *The claimant has no title to the demand which he presents.*

The demand, if any, accrued to the Mechanics' Bank of the city of New York, a corporation created under the laws of New York.

The only evidence of title offered by Irvin is a deed conveying all the effects of the bank, signed by Shepherd Knapp as president, with a seal attached to his name. But there is no evidence that the board of directors, to whom the management of the business of the bank was committed by its charter, had authorized him to do so. There is no evidence that the board of directors or the stockholders had ever acted upon the subject of such transfer, while the assignment itself as well as the charter shows that the effects of the bank amounted to some hundreds of thousands of dollars.

There are two statutory objections to this assignment.

1. That there is no evidence that it was authorized by the directors of the bank.

The revised laws of New York, 1 vol., p. 722, provide in case of all corporations:

"§ 8. No conveyance, assignment, or transfer, not authorized by a previous *resolution of its board of directors*, shall be made by any such corporation, of any of its real estate, or any of its effects, exceeding the value of one thousand dollars." o o o o o

At page 731, "effects" are defined, and are to be "construed to embrace every species of property, real and personal, including things in action.,"

In this case the plaintiff claims under an assignment of more than a thousand dollars' worth of effects, without showing a previous resolution of the board of directors. On this ground the assignment is bad.

2. The assignment, if authorized by the board of directors, is invalid, because not authorized by law, but, on the contrary, was against law.

The assignment on its face is of all the property of the Mechanics' Bank, except its banking house, to T. W. Edmunds, Robert Kelley, and Richard Irvin, for various uses and purposes set forth in it, but principally to be conveyed by them to another corporation, though all the stockholders did not concur in that arrangement.

Such assignments are not only not authorized by law, but are contrary to the laws of New York applicable to the cases of dissolution of corporations.

The laws of New York, (1 vol., p. 732, § 9,) provide as follows:

"Upon the dissolution of any corporation, created or to be created, and unless other persons shall be created by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporation, at the time of its dissolution, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses."

These provisions prohibit such assignments as the one in question. The law provides for the case, when neither the legislature nor the proper court name or appoint some other person to perform that duty.

The directors who were such at the expiration of the charter were the only persons who, under the law, could be trustees and wind up the affairs of the bank. The persons who now claim, do so under the assignment and not otherwise. But the law prohibits their taking and acting.

Upon both grounds the assignment is a nullity, and confers no title upon the grantees in it. Consequently the claimant's title fails and no judgment can be rendered in his favor.

SECOND. *An assignee cannot alone and separate from his co-assignee bring a suit and recover.*

This is a suit to recover a large sum from the United States. The petition is by Irvin alone, and no sufficient reason is assigned why Edmonds, who appears to be still alive, does not join in it.

It is unquestionably true that one of two owners of a demand cannot sue alone, but both must join.

Although payment to one might be a good payment under ordinary

circumstances, still that has no bearing upon the question who ought to be parties to a suit.

It cannot be known to this court but that the remaining assignee is opposed to this proceeding, or is of the opinion there is no claim which he is willing to assert. He may know it to have been paid. The proper parties, plaintiffs, not having been joined, no recovery can be had.

THIRD. *This is a stale demand, which the law presumes has been paid or discharged by lapse of time.*

The transactions in question were in 1814 and 1815.

There is no evidence that the Mechanics' Bank, from that day to the end of its charter, in 1854, ever set up any claim, under anything done by the Treasury Department. There is no evidence that it applied there or to Congress upon the subject.

It received the ten per cent. stock to which it was entitled in consequence of the loan of August, 1814, being taken upon terms more favorable to the lender. There is no evidence that it demanded more then, or that it did so afterwards. More than forty years intervened between the transactions and the expiration of the charter. Payment of an acknowledged debt upon a sealed instrument is presumed in half of that time. The conclusion is irresistible that the bank was settled with and paid to its satisfaction long ago. If a record was made of it in the Treasury Department at the time, it doubtless perished in the burning of the treasury building referred to in the evidence. The fact of the loss of the treasury records furnishes a striking illustration of the reason and necessity of the rule in question. The non-claim for so long a period ought to bar any demand. This case shows how entirely impossible it is to make proof concerning the settlement of such stale claims. The United States insist that time has put an end to all claim in this case.

FOURTH. *That the depositions of Dennis A. Smith must be excluded from this case.*

One must be excluded because it was *ex parte*, and taken for the purpose of being used before Congress, and under the direction of the prosecuting agent.

The other must be excluded because it is not legal evidence in the case, it being also *ex parte*, and not having been taken in this suit, but in one claimed to have been pending against Barker in New York.

Although it might have been lawfully used in the suit between the United States and Barker, in New York, it is no evidence of any controverted fact here. Both were entirely *ex parte*, and the United States had no opportunity to cross-examine and call out all the facts.

Again, there is no evidence of the authenticity of the one said to have been filed in New York, nor is it shown that the 30th section of the judiciary act of 1789 was conformed to in all or any respect, so as to make it evidence in the court then.

1. It was not shown that the witness resided at a greater distance than one hundred miles from the place of trial, or was bound on a voyage to sea, or was about to go out of the United States, or was out of such district, or to a greater distance than one hundred miles from the place of trial before the time of the trial, or that he was ancient or very infirm.

Neither of those prerequisites appear in the deposition, and unless one of them was shown to the commissioner, the deposition could not have been lawfully taken *ex parte*, and even in that case, it could be taken only *debene esse*.

2. It does not appear that the plaintiffs (the United States) were notified of the taking of such deposition. This is necessary in all cases where the party or his attorney resides within one hundred miles of the place of taking the deposition. There is no evidence that the plaintiffs did not reside within a hundred miles, nor any that the plaintiffs had no attorney within that distance. On the contrary, the Attorney General (Mr. Wirt) resided within that distance, and that the United States had an attorney for the district of Maryland within such distance.

3. There is no evidence in this case that Barker made the necessary proof of either of the first above-mentioned facts, so as to entitle the deposition to be read in the court in New York. The deposition could not have been read as a matter of course. Before it could be read, Barker would have been compelled to make the same proof as must be made in all cases where depositions are taken *debene esse*.—(*See cases cited in Curtis's Digest*, title Evidence, C; The *Patapsco In. Co.* vs. *Southgate*, 5 Pet., 603.)

The act must be strictly pursued.—(*Bell* vs. *Morrison*, 1 Pet., 351.)

4. It is not shown that the deposition was reduced to writing *by commissioner* or by the *witness*.

This is necessary by the words of the statute.—(*Bell* vs. *Morrison*, 1 Pet., 351.)

5. The commissioner does not certify, as required by statute, that neither the plaintiffs nor their attorney resided, at the time of taking the deposition, within one hundred miles of the *place* of *taking*.—(*Dick* vs. *Runnels*, 5 How., 7.)

The certificate of the commissioner is, that the place of residence of the *witness* was more than a hundred miles from the *place of trial*, and therefore it is insufficient.

6. There is no evidence that "Lewis Eichilberger" was in fact such commissioner as was authorized to take such depositions.

For these various causes, this affidavit cannot be received and read in evidence now. There is no evidence that it was even read in New York, or that it was entitled to be read. It is not shown when and where and by whom the deposition was opened; and if not proved to have been done in *open court*, it could not be read.—(*Beale* vs. *Thompson*, 8 Cranch, 70.)

The fact that the deposition was among the files of the court proves nothing, as the clerk will file any paper on the payment of his fee for filing.

7. There is no sufficient evidence that any such paper was filed in

the Barker case. The verification is not in conformity with the statute of Congress, so as to make it evidence. That act does not relate to record and proceedings in the *national* courts, but is confined to *State* courts. That it is not so certified as to make it evidence at common law, is most clear.

But, if admissable, these *ex parte* depositions do not prove that the contract between Smith and the United States was different from the one in writing found in the records of the department. It was not taken to prove any such thing. There was no issue in that case that called for such proof.—(See Paine's C. C. R., 156.) No such inference was drawn from the affidavit at the time. Under the circumstances of this case, there can be no just claim to give these affidavits any specially liberal construction against the United States.

FIFTH. *The legal presumption is, under the evidence in this case, that the deposition of Richard Smith applies either to the loan of November* 1814, *or of February* 13, 1815.

Mr. Dallas, as Secretary of the Treasury, had had much trouble and perplexity growing out of the contracts of his predecessor in relation to the extra amount of stock claimed under the first ten millions of the $25,000,000 loan. Something like a million of stock had been issued, or was to be, to fulfil one of the peculiar provisions of the contract concerning the first ten millions, on the letting of the next six millions. This fact alone was calculated to put him upon his guard as to doing any act which would increase the liability of the government on that account.

He had obtained a law of Congress authorizing a loan of three millions, which the District banks were authorized to subscribe for. There was no reason for this law, when there were several millions which could have been taken under the twenty-five million loan, except to avoid the very difficulties which had been occasioned by Mr. Campbell's contract, and when Congress had passed a law for a half million loan, which the banks were permitted to take, which he could use.

Having both of these loans to resort to, and neither of which could possibly involve the department in difficulty under the Campbell contracts, he would not be likely to avoid them and continue to act under the one that had been and might be again the subject of difficulty.

The fact that of this half million loan the Bank of Columbia did take $25,000, and that it does not appear that any was taken by R. Smith in his own name, or that any was taken by the Mechanics' Bank at Annapolis, raises the presumption that what Smith refers to in his evidence is this $25,000 in the half million loan.

He doubtless took it in the name of the bank that he represented in the treasury building, and that the Annapolis bank received it from the Bank of Columbia. In that event Smith's name would not be on the books at all, nor would that of the Mechanics' Bank of Annapolis.

SIXTH. *The receiving funds that were at par in private and in public transactions, was not receiving subscriptions to a loan upon terms more advantageous to the lenders than those which had previously been taken.*

The government wanted funds to pay salaries, debts, and contracts. The evidence is conclusive that it received such funds under the loan of May, and under the August loan, and under all subsequent loans. The President and all persons employed in Washington under the government, and all contractors, received at par the bills of the banks which had been taken under these loans. To the government they were just as good as gold and silver for these purposes. The bills received were evidence of a debt against the banks issuing them, payable in gold and silver if the government had chosen to demand them. The government had the right, notwithstanding these contracts, to receive such funds as it chose, if they would meet and cancel its engagements in lieu of gold and silver. The substance of all these transactions is this, that the government and the banks exchanged credits, and the latter was made the standard. The government took on these late loans what it had on all others, bank credits—that is, bank bills at par—and paid them out at par. This conferred no rights upon the holders of the stock in the ten million loan. The government had the option to take such currency as best served its purposes, and no third party had any right to complain. But in this case it is quite clear that none was thus taken in the $25,000,000 loan, and therefore if currency ever so inferior had been received, it would form no cause of just complaint by the Mechanics' Bank, or any one else. It follows that no recovery can be had.

R. H. GILLET, *Solicitor.*

JANUARY 29, 1859.

IN THE COURT OF CLAIMS.

RICHARD IRVIN, Trustee, *vs.* THE UNITED STATES.

SCARBURGH, J.

By an act of Congress approved March 24, A. D. 1814, the President of the United States was authorized to borrow, on the credit of the United States, a sum not exceeding twenty-five millions of dollars. Under that act the Secretary of the Treasury, on the 4th day of April, A. D. 1814, published an advertisement inviting proposals till the 2d day of May thereafter, from any person or persons, body or bodies corporate, who might offer, "for themselves or others, to loan to the United States, on account and in part of the aforesaid sum of twenty-five millions of dollars, the sum of ten millions of dollars, or any part thereof not less than twenty-five thousand dollars."—(8 Am. State Papers, 2 Finance, 845, 846.)

Under this notice Whitehead Fish made a proposal to lend to the United States two hundred and fifty thousand dollars, and his pro-

posal was accepted. As to one hundred and fifty-three thousand eight hundred dollars, this proposal was made in behalf of the president, directors, and company of the Mechanics' Bank of the city of New York. The terms on which this loan was made, so far as it is necessary now to state them, were as follows: "Eighty-eight dollars in money for each hundred dollars in stock; and the United States engage, if any part of the sum of twenty-five millions dollars authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons who may then hold the stock, or any part of it, issued for the present loan of ten millions."

For this loan there was issued to the president, directors, and company of the Mechanics' Bank of the city of New York, on the 25th day of August, A. D. 1814, stock amounting to the sum of *one hundred and seventy-four thousand seven hundred and seventy-two dollars and seventy-two cents.*

The petitioner alleges that the Mechanics' Bank paid to the United States on account of the loan as follows: On the 26th day of May, A. D. 1814, *thirty-eight thousand four hundred and fifty dollars*, and on the 29th day of June, A. D 1814, *one hundred and fifteen thousand three hundred and fifty dollars;* and that those payments were made in the lawful money of the United States, or in funds of equal value.

It appears from the deposit book of the bank that there was placed thereon to the credit of T. T. Tucker, Treasurer, on the 26th day of May, A. D. 1814, the sum of *one hundred and fifteen thousand dollars*, and on the 29th day of June, A. D. 1814, the further sum of *one million one hundred and twenty-four thousand five hundred and fifty dollars.* T. T. Tucker was at that time Treasurer of the United States.

It appears from the ledger of general accounts of the bank that an account was opened thereon with "Loan to the United States," and in that account there is, under date of May 26, A. D. 1814, a charge of "cash subscription" $38,450, and under date of June 29, A. D. 1814, a further charge of "do." $115,350. The former is included in the above-mentioned sum of *one hundred and fifteen thousand dollars*, and the latter is included in the above mentioned sum of *one million one hundred and twenty-four thousand five hundred and fifty dollars.* The entries upon the ledger are as follows:

Dr.	LOAN TO THE UNITED STATES.		Cr.
1814.		1814.	
May 26. To cash subscription	$38,450	Sept. 10. By cash	$8,800
		1815.	
June 29. To cash subscription	115,350	April 18. By cash	145,000
	153,800		153,800

It appears from the ledger kept by the commissioner of loans for the State of New York, that on the 25th day of August, A. D. 1814, there was issued to the "president, directors, and company of the

Mechanics' Bank, New York," stock for $174,772 72; and that on the 12th day of December, A. D. 1814, they transferred $10,000 of the above amount to other parties, leaving to their credit $164,772 72.

The just conclusion from this evidence is that the payments by the Mechanics' Bank of New York to the United States on account of the loan were made by a mere dash of the pen—by simply entering the charges already noticed against the "loan to the United States" on the bank's ledger, and then by giving credit for their several amounts to the Treasurer of the United States on its deposit book. This, at most, was but an exchange of credits. The United States gave their stock to the bank, and the bank, in return, gave the United States credit therefor on its books at the rate of $88 of bank credit for every $100 of stock. *How*, or *when*, or *in what funds* the United States actually received satisfaction for the sums entered to their credit on the books of the bank does not appear from the evidence which has been offered in this case.

My opinion, therefore, is that the petitioner's averment, that the payments by the Mechanics' Bank of New York to the United States on account of the loan were made in the lawful money of the United States, or in funds of equal value, is not sustained by the evidence.

On the 25th day of July, A. D. 1814, the Secretary of the Treasury, under the act of the 24th of March, A. D. 1814, already mentioned, published another notice, inviting proposals till the 22d day of August then next, for loaning to the United States *six millions of dollars*, or any part thereof not less than *twenty-five thousand dollars*. This notice did not differ materially, except as to the sum to be loaned and the dates of payment, from that of the 4th of the preceding April. Under it, Dennis A. Smith, by a letter dated at Baltimore, August 22, A. D. 1814, and addressed to the Secretary of the Treasury, proposed to lend to the United States *eighteen hundred thousand dollars*, at the rate of *eighty per centum*, naming, as the banks into which the payments would be made, the Bank of Pennsylvania and the Mechanics' Bank of Baltimore. This proposal was accepted by a letter from the Secretary of the Treasury to Dennis A. Smith and others, dated August 31, A. D. 1814. In that letter the Secretary said: "But as some delay, the cause of which is doubtless known to you, has unavoidably taken place in advising you of the acceptance of your proposal, the first payment may, if your convenience shall require it, be made on the 20th instead of the 10th of September, as required by the public notification. This, however, will not affect the subsequent instalments, which are nevertheless to be paid on the days already fixed, viz: the 10th day of the months of October, November, and December."

On the 12th day of December, A. D. 1814, the day on which the Mechanics' Bank, of the city of New York, transferred $10,000 of their original stock to other persons, supplemental stock for $16,477 27, was issued to the president, directors, and company of that bank, the same being *ten per centum* upon the $164,772 72 of original stock remaining in their hands after the above-mentioned transfer was made. But the petitioner alleges that the Secretary of the Treasury, on the 31st of August, A. D. 1814, accepted proposals for a portion of the

loan of $6,000,000, at the rate of $100 of public stock for every $80 of the money loaned, payments to be made, one fourth part each, on the 10th days of September, October, November, and December, *in the currency or bank notes* of the banks of Baltimore and the District of Columbia, *at par;* that for every $80 of such currency the United States issued $100 of the public stock authorized by the act of March 24, A. D. 1814; that when the payments were made the banks of Baltimore and Washington were not redeeming their notes with specie, so that on the 10th day of September, A D. 1814, $100 of such currency was worth but $90; on the 10th day of October, A. D. 1814, but $88; on the 10th day of November, A. D. 1814, but $80, and on the 10th day of December, A. D. 1814, but $76, in the lawful money of the United States; and that the $153,800 loaned by the Mechanics' Bank of New York to the United States were worth $185,070 of the above-mentioned notes, estimating them at their nominal value, and would have purchased stock, at the rate of $100 of stock for every $80 in such bank notes, to the amount of $231,337 50. He, therefore, in his original petition, claims the sum of $56,564 88, the difference between $174,772 72, the amount of original stock actually issued, and the $231,337 50, with interest thereon from the time the money was paid by the Mechanics' Bank of New York.

It will be observed that the petitioner here gives no credit to the United States for the $16, 477 27 of supplemental stock issued on the 12th day of December, A. D. 1814, and takes no notice of the transfer of $10,000 of the original stock made on that day. But, in his original brief, he in effect concedes that supplemental stock to the amount of *ten per centum* upon the whole original stock had been issued. and that the United States are justly entitled to credit therefor. Still, as to the alleged difference in value between the funds in which the loan by the Mechanics' Bank of New York was made, and the bank notes above mentioned, he now claims the whole thereof, without regard to the transfer of $10.000 of the original stock made on the 12th day of December, A. D. 1814.

The principal evidence relied on to support the averment that the loan of the 31st of August, A. D. 1814, was made *in the currency or bank notes* of the banks of Baltimore and of the District of Columbia, is the deposition of Dennis A. Smith. This witness testifies, "that on or about the 30th of August, 1814, he contracted with the then Secretary of the Treasury to loan to the United States the sum of one million eight hundred thousand dollars, being part of the twenty-five millions of dollars authorized to be borrowed by the act of Congress of the 24th of March, 1814; for which sum, so to be loaned by deponent to the United States, he was to receive six per cent. stock to the amount of one hundred dollars for each eighty dollars paid; and it was further understood and agreed between the Secretary of the Treasury and him (deponent) that he (deponent) should pay for the same in paper of the banks of the District of Columbia and of the banks of the city of Baltimore, which banks received their own paper at par; and it was further agreed that, on producing the proper evidence of the payment of the said sum of one million eight hundred thousand dollars to the commissioner of loans of the United States, funded

stock to the amount of one hundred dollars, bearing an interest of *six per cent. per annum*, should issue for each eighty dollars of the paper of the said banks so paid by deponent. That, in pursuance of such understanding and agreement, the deponent did so pay, in the paper of the said banks, the one million eight hundred thousand dollars aforesaid, and did receive therefor funded stock to the amount of two million two hundred and fifty thousand dollars; that the said banks, in whose paper this deponent paid the said one million eight hundred thousand dollars, did not, at the time the deponent so paid, redeem their notes with specie." This testimony was given on the 6th day of November, A. D. 1820.

The same witness, on the 11th day of March, A. D. 1835, made an affidavit, which is nearly an exact copy of the deposition of the 6th day of November, A. D. 1820, except this addition: "That the bank notes paid by deponent to the Secretary of the Treasury were at least 20 per cent. below the par value of silver and gold, and that fact was well known to the Secretary of the Treasury, and was a matter of notoriety." The coincidence of language between the deposition and *affidavit* arose, doubtless, from the fact that Dennis A. Smith, when called on to give the latter, was furnished with a copy of the former, with a request that he would "repeat it, with the addition, if possible, of the difference between these notes, and the notoriety of that difference."—(See the letter from Matthew St. Clair Clarke to Jacob Barker, dated at Washington, February 10, A. D. 1835.)

The solicitor for the United States insists that the contract between the United States and Dennis A. Smith was in writing, and objects to the admissibility of the testimony of Dennis A. Smith, on the ground that it tends to contradict or vary the written contract. If such were the effect of this evidence, still the objection to it would not be well founded. The rule that parol evidence is inadmissible to contradict or vary the terms of a written contract is applied only in suits between the parties to such contract; it does not affect third persons.—(1 Greenleaf on Ev., § 279.) But this evidence does not contradict or vary the written contract. The written contract is embodied in the advertisement of the 25th day of July, A. D. 1814, the proposal of Dennis A. Smith of the 22d day of August, A. D. 1814, and the Secretary of the Treasury's acceptance thereof of the 31st day of August, A. D. 1814. It will be observed that Dennis A. Smith does not, in terms, mention this contract, but he obviously refers to it, and to no other. The papers just noticed are sufficient evidence of themselves, nothing appearing to the contrary, of a complete contract; and, until the contrary be shown, they must be taken and received as exhibiting the actual contract between the United States and Dennis A. Smith. They have been preserved among the archives of the Treasury Department, and always relied upon by the United States as the evidences of that contract. When, therefore, Dennis A. Smith speaks of the contract between him and the United States, it must be presumed that he intends to refer to the written contract, unless a different intention is apparent; and the fact that his language is susceptible of an interpretation different from the writings is not enough to show such different intention. For such a purpose the language should be

so clear and explicit as to leave no room for doubt. This is due alike to truth and to the witness himself. If he had intended to contradict or vary the written papers he would naturally have referred to them in terms, and expressly stated their language, and in what respect it did not truly set out the intention of the parties. He would then have fairly and properly met the responsibility of assailing the written instruments to which he was a party, and nothing would have been left to implication. But such was not his purpose, and hence this course, so obviously proper if the contrary had been his intention, was not pursued. All that he meant to do was to state his recollection of the contract—the very contract evidenced by these papers—and what was done under it. It never occurred to him that he was doing anything more. He plainly did not undertake to state that the papers relied on by the government as embodying the contract do not embody it; nor does it anywhere appear that his intention was drawn to this point.

The correctness of these views will be still more apparent from an analysis of the testimony of Dennis A. Smith, and a comparison of it with the writings. He states that he made the loan of $1,800,000 to the United States; and this appears from the written instruments. He states that he made the contract on or about the 30th of August, A. D. 1814; and the acceptance of his proposal bears date on the 31st day of August, A. D. 1814, which may very properly be said to have been *about* the 30th of August, A. D. 1814. He says that he was to receive one hundred dollars in stock for each eighty dollars paid; and in this respect, also, there is an entire concurrence between his statement and the writings. He says that it was understood and agreed between him and the Secretary of the Treasury that he should pay for his stock in paper of the banks of the District of Columbia and of the banks of the city of Baltimore; and it appears from the writings that his payments were to be made into "the Bank of Pennsylvania and the Mechanics' Bank of Baltimore." Here it is supposed that there is a conflict between the testimony of Dennis A. Smith and the writings, but in fact none was intended. In saying that his payments were to be made in the notes of the banks of the District of Columbia and of Baltimore, the witness merely meant to say that they were to be made into those banks. His only mistake on this point was, that by the written contract he was confined to the Bank of Pennsylvania and the Mechanics' Bank of Baltimore. That the testimony of this witness is not to be literally understood, but that he states results and inferences—conclusions drawn br his own mind—rather than mere facts, is plain from his mode of giving his evidence. An illustration may be found in his statement, made in the *affidavit* of March 11, A. D. 1835, "that the bank notes paid by deponent to the Secretary of the Treasury," &c. Now, in fact, he never paid a dollar to the Secretary of the Treasury, but doubtless considered that, in paying the money into the banks specified in the contract, he in effect paid to the Secretary of the Treasury; and so, in stating that his payments were to be made in the notes of those banks, his inference—the conclusion of his mind—was, that he was stating the same thing as if he had said that his payments were to be made into those banks.

Such, it seems to me, is plainly enough the effect of Dennis A. Smith's testimony. It, then, does not contradict or vary, or in in any respect assail, the written instruments. And this view of his evidences is corroborated by the fact that Dennis A. Smith was a subscriber to the $10,000,000 loan to the amount of *two hundred thousand dollars;* and though he lived more than twenty years (how much longer we are not enable to state) after he made the contract in question, yet he never set up any such claim as that now made by the petitioner.

To relieve this case from the difficulties which embarrass it on this point, it has been urged, in behalf of the petitioner, that the advertisement of the 25th day of July, A. D. 1814, the proposal of Dennis A. Smith of the 22d day of August, A. D. 1814, and the Secretary's acceptance thereof of the 31st day of August, A. D. 1814, do not exhibit the true contract between Dennis A. Smith and the United States. To support this view of the case, it has been insisted that the proposal was not accepted in the very terms in which it was made, and that the acceptance came too late. But, in truth, the proposal was accepted in the very terms in which it was made. The only difference which has been suggested is the offer to extend the first payment from the 10th to the 20th day of September, A. D. 1814; but this was no part of the acceptance; it was a mere offer made for the convenience of Dennis A. Smith, and which he was at full liberty to avail himself of or not, at his option. The language used was: "The first payment may, *if your convenience shall require it*, be made on the 20th, instead of the 10th of September, as required by the public notification." Here was an offer to give up a requirement made for the benefit of the United States, if Smith's convenience should require it, (and of that he was to be the judge,) whilst the acceptance itself was absolute and unconditional. As to the question of time, it may be remarked that Smith's was a continuing proposal after it was received by the Secretary of the Treasury, and for a reasonable time thereafter; that it might have been withdrawn at any moment before it was accepted by the Secretary; and that, *prima facie*, by the acceptance before such withdrawal, the contract was completed.—(1 Parsons on Contracts, p. 406.) If Mr. Smith could have objected to the acceptance on the ground of the lapse of time, or of other circumstances, it was incumbent on him to have promptly made the objection. His failure to do so for any considerable length of time would raise the presumption of acquiescence on his part, and render the acceptance binding upon him. But he made no such objection, nor did he at any time pretend that the acceptance was not obligatory upon him. The view, therefore, that the bargain failed because the acceptance came too late is not sustained. Moreover, here are written instruments, to which Dennis A. Smith was a party, and, to say the least of them, they make out a *prima facie* contract between him and the United States. If it was his purpose, in his testimony, to say that these papers do not truly set out the contract actually made between him and the United States, he ought at least to have stated how it was that they stopped short of consummation; and if, indeed, his testimony is to be understood in the sense which has been insisted upon by the petitioner, his failure to make this explanation would go far to impair, if it would not destroy it.

Again: there is no dispute about the authenticity or the genuineness of the written papers. They are what they purport to be, and they express the true intent and meaning of the parties, respectively, when they were written. The legal conclusion to be deduced from them, as we have seen, is obvious. To rebut this conclusion requires facts, clear and convincing. Mere inferences from facts not stated will not do. Dennis A. Smith says that "it was further understood and agreed between the Secretary of the Treasury and him (deponent) that he (deponent) should pay for the same in paper of the banks of the District of Columbia, and of the banks of the city of Baltimore." It will be observed that here is a statement, not of facts, but of a conclusion of law. The witness does not tell us what took place between him and the Secretary of the Treasury, but he undertakes to say what was the legal effect of what took place between them. What the contract was is a conclusion of law, to be deduced from facts, from what was said and done by the Secretary of the Treasury, and what was said and done by the witness. Whether these facts constituted an agreement or contract between the United States and the petitioner, and if aye, what was its legal effect, are questions which the witness undertook to decide; but unless he is to be understood as referring to the written papers, he did not furnish the means of testing the accuracy of his judgment by stating the facts on which it was founded. Except upon the hypothesis that he had in contemplation the written instruments, we cannot say, from his testimony, what took place between the parties, what was said and done by them respectively, or whether the contract between them was oral or in writing. Besides, we have already shown that he may have deduced the very conclusion which he has stated, and probably did deduce it, from the written papers. Such testimony cannot impair the legal effect of the written instruments.

Then the contract made by Dennis A. Smith with the United States on the 31st day of August, A. D. 1814, was a contract in writing for the loan of money to the United States, to be paid into the banks specified in the contract. But the contract made by the Mechanics' Bank of New York with the United States was a contract in writing for the loan of money to the United States, to be paid into the banks specified therein. If the latter was a contract for the payment of specie, or its equivalent, so was the former. In this respect there was no difference whatever between them. There is nothing in either of them which indicates, either in express terms or by implication, that it was a contract for a loan to be paid in the notes of those banks, or in the notes of any other banks. Whether the actual payments under either were made in a better currency than the actual payments under the other, the evidence in this case does not enable us to determine.

The petitioner, in his amended petition, avers that in February, A. D. 1815, the Secretary of the Treasury borrowed of the Farmers' Bank of Annapolis, Maryland, a sum of money under the act of March 24, A. D. 1814, in bank notes, which were twenty-four per cent. less in value than the lawful money of the United States, and claims that by reason thereof he is entitled to $45,830 49, or, otherwise, to $48,062 50, with interest thereon. To support this averment he relies

mainly on the testimony of Richard Smith and certain documentary evidence.

Richard Smith testifies that "on the morning of the day when the news of the treaty of peace was received, which was some time in February, 1815, I applied to the treasury, at the request of the Farmers' Bank of Annapolis, to subscribe for United States stock to the amount of twenty-five thousand dollars, at eighty-five per cent., payable in the notes of the banks of the District of Columbia. The Secretary was not in his office. Mr. Sheldon, the acting chief clerk, received the offer, but could not give the answer in the absence of the Secretary. I called on the following day, and received from Mr. Dallas the answer that I should have the stock. It was accordingly taken at that rate." He further says: "The amount was placed to the credit of the Treasurer of the United States on the books of the Bank of Columbia, and the bills of that bank were paid on the checks of the Treasurer. The bid was made by me for the Farmers' Bank of Annapolis, at the request of the Farmers and Mechanics' Bank of Georgetown, but whether it had any connexion with the transaction with the Bank of Columbia or not I cannot say." The transaction with the Bank of Columbia here referred to was a credit entered in the account of the receipts and expenditures of the United States for the year 1815, of *twenty-five thousand dollars*, received from William Whann, cashier of that bank, "on account of the loan of six millions of dollars, *per* act of March 24, 1814." This witness also testifies, in answer to the first direct interrogatory: "The books of the late Bank of Columbia were sent to the Bank of the United States, at Philadelphia, some three years ago, and I am informed that they have been destroyed." He further testifies that at the time when the $25,000 were paid, the bills of the banks of the District of Columbia were from twenty-two to twenty-four per cent below par, and that those banks suspended specie payments "towards the last of August, 1814, immediately after the capture of Washington, and resumed on or about January, 1817, when the Bank of the United States went into operation."

On cross-examination, Richard Smith, in answer to the question, "Do you know that William Whann did not subscribe for $25,000 of the stock mentioned in said first direct interrogatory, either on his own account or on account of the Bank of Columbia; and if so, how do you know that he did not do so?" says: "I have no knowledge or recollection on the subject, as the books are all destroyed." In answer to the question, "If you made the subscription yourself for the Farmers' Bank of Annapolis, as you stated in your former examination in Barker's case, why was not the loan entered in your name, or in that of said Farmers' Bank; and what has changed your opinion as to your being the subscriber for this loan?" he says: "I know of no reason why it was not entered in the name of the bank, and I have not changed my opinion on the subject, but still believe that the subscription then made by me was for said Farmers' Bank of Annapolis." In answer to the question, "Do you know of your own knowledge, and if so, how do you know, that your subscription was entered in the name of William Whann? And do you know, and if so, how, that this stock was ever transferred by him to the Farmers' Bank; and when

did the transfer take place?" he says: "I have no knowledge whatever of any such transactions." And in answer to the question, "Do you know that the said $25,000 loan was in fact paid in bills of the District banks; and if so, how do you know it; and in the bills of what banks was it paid, and by whom, and when, and where?" he says: "They were paid in notes of the Bank of Columbia, on checks of the Treasurer of the United States, as stated in my answer to the second direct interrogatory, as all deposits to the credit of the Treasurer were generally paid in that way. I know it from my recollection of the manner in which all drafts of the Treasurer were paid at that time. I was the agent for the bank of Columbia, at their office in the treasury building, and made most of the payments myself, but cannot state the precise dates, it being between the 1st of April, 1811, and the 1st of March, 1817." He further says that the funds to make the loan "were deposited with us by the Farmers and Mechanics' Bank of Georgetown, but of what description of funds I cannot now recollect." He also says that he does not know "which loan was awarded to us; and for the reason before mentioned, that the books have all been destroyed. I have no written memorandum to refresh my memory." And he further states that General John Mason was the president, and William Whann the cashier, of the Bank of Columbia, which was located in Georgetown; that he (the witness) was the agent of that bank, and received deposits and paid checks thereon at their office in the Treasury Department, and William Whann transacted business at the principal bank in Georgetown; and that immediately after accepting his "bid for the $25,000, the Secretary refused to sell any more of the stock at the same rate."

The Secretary of the Treasury, in his report of December 8, A. D. 1858, states that $140,810 of the loan authorized by the act of March 24, A. D. 1814, was obtained at eighty-five per cent.—(See 9 Am. St. Papers, 7.) The petitioner insists that the loan of $25,000 made by the Farmers' Bank of Annapolis, and mentioned by Richard Smith in his testimony, was a part of the above-mentioned sum of $140,810. He infers this from the coincidence in price between the two loans. It nowhere appears in evidence by whom the loan of $140,810 was made, or at what time, except that it was before the 30th of September, A. D. 1815.

In answer to this view of the petitioner, the solicitor for the United States says, that on the 15th day of November, A. D. 1814, an act of Congress was passed, authorizing a loan of $3,000,000, (3 Stat. at L., ch. 4, p. 144) that on the 13th day of February, A. D. 1815, a further act was passed, authorizing a loan of $500,000, (3 Stat. at L., ch. 41, p. 205;) that it appears from the report of the Secretary of the Treasury of December 8, A. D. 1815, (9 Am. St. Papers, pp. 13, 30,) that prior thereto loans under the former act, amounting to $950,000, and under the latter act, amounting to $100,000 had been received, and that $25,000, part of the latter sum of $100,000 was obtained from the Bank of Columbia. From these facts, he insists that the loan made by the Farmers' Bank of Annapolis is the same which is stated in the Secretary's report to have been obtained from the Bank of Columbia, and was consequently a part of the loan of $500,000, authorized by the

act of February 13, A. D. 1815, and not a part of the loan of $25,000,000, authorized by the act of March 24, A. D. 1814.

The petitioner, in his reply to the solicitor for the United States on this point, fell into a mistake in stating that the loan of $25,000 by the Bank of Columbia, referred to by the solicitor, was made on the *third* day of February, A. D. 1815. He mistook the date given in the American State Papers, vol. 9, p. 30, of the act under which the loan was made, for the date of the loan; and the date there given of the act of Congress, is by mistake, put down "February 3, 1815," instead of February 13, A. D. 1815. The true date is given in the caption of the statement. The mistake of the printer, or the copyist, led to the mistake of the petitioner's counsel. It does not appear when the loan of $25,000 by the Bank of Columbia, referred to by the solicitor, was made.

But the petitioner having shown that the sum of $25,000 was received by the United States, in the year 1815, from William Whann, cashier of the Bank of Columbia, "on account of the loan of six millions of dollars, *per* act of March 24, 1814," (see Register's certificate annexed to Richard Smith's dep.,) seeks thence to deduce the conclusion that the same was the $25,000, loaned by the Farmers' Bank of Annapolis. It does not appear when the above-mentioned sum of $25,000, paid by William Whann, cashier of the Bank of Columbia was received. It is plain that the petitioner's conclusion is by no means a logical deduction from his premises. It is even more probable that the sum last mentioned was paid on account of some of those persons, who are known to have been subscribers to the six million loan, than that it was paid on account of the Farmers' Bank of Annapolis. This is obvious from the consideration that the persons who are known to have subscribed to the $6,000,000 loan, had payments to make on account of that loan, whilst we do not know whether the Farmers' Bank of Annapolis had any such payments to make or not. To render the petitioner's suggestion of any value, we must assume as true the very point he seeks to prove, that the Farmers' Bank of Annapolis had a payment to make on account of the $6,000,000 loan. Without this assumption, there is no logical probability that the payment by William Whann, cashier of the Bank of Columbia, was made for the Farmers' Bank of Annapolis.

The truth is, that the facts shown by the evidence in this case on this point, lead to no certain result. At best, they but suggest a conjecture—a mere guess; but they do not logically conduct us to any satisfactory conclusion. The loan made by the Farmers' Bank of Annapolis may have been the loan of $25,000, stated by the Secretary of the Treasury to have been obtained from the Bank of Columbia, under the act of February 15, A. D. 1815, or it may have been part of the $140,810 obtained at eighty-five *per cent.* under the act of March 24, A. D. 1814, and the very $25,000 paid by William Whann, cashier of the Bank of Columbia. But whether it was the one or the other, or something else wholly unconnected with either, are questions which the evidence furnishes us no means of determining. Even the witness, Richard Smith, who took part in the transaction, cannot answer them. He does not know under what act of Congress the loan was made.

It may be proper here to remark that William Whann was a subscriber to the ten million loan under the act of March 24, A. D. 1814, to the amount of $432,500, and that no claim like that now set up by the petitioner has ever been asserted in his behalf. These facts, after so great a lapse of time, tend to raise the presumption that the loan by the Farmers' Bank of Annapolis was not made under the act of March 24, A. D. 1814. It may be added, too, that the Secretary of the Treasury, on the 18th day of February, A. D. 1820, in a communication to the Senate of the United States, stated "that no money was raised by loan under the act authorizing a loan of $25,000,000, subsequent to the 31st of August, 1814, upon terms more favorable to the lenders than the loan of the 2d of May, 1814."—(See 19 Am. St. Papers, 773.)

In regard to the testimony of Richard Smith, it may be further remarked that he does not state whether the proposition made by him to the Secretary, or the answer thereto, was oral or in writing. After stating that he received from Mr. Dallas the answer that he should have the stock, he adds: "It was accordingly taken at that rate." How taken? What act or acts were done to constitute this taking? Did the witness have any agency in it? By whom, and in whose name, was it done? Was no record made of it? Was it merely an oral transaction? Are such things so done in the Treasury Department? If there were writings, what were they? If they are destroyed and parol evidence may be offered to prove what they contained, ought not the witness at least to state what he knows about them, and as nearly as he can what was entered upon them? Does not the value of his testimony depend very much upon the accuracy with which he can do this, and the extent of his recollection of the words employed? "When a written contract is to be proved, not by itself, but by parol testimony, no vague uncertain recollection concerning its stipulations ought to supply the place of the written instrument itself. The substance of the agreement ought to be proved satisfactorily, and if that cannot be done, the party is in the condition of every other suitor in court who makes a claim which he cannot support. When parties reduce their contract to writing, the obligations and rights of each are described and limited by the instrument itself. The safety which is expected from them would be much impaired if they could be established upon uncertain and vague impressions made by a conversation antecedent to the reduction of the agreement."—(Per Marshall, C. J., in Tayloe *vs.* Riggs, 1 Peters R , 591, 600.) In general the contents of a lost instrument "may be proved by parol evidence by witnesses who have seen and read it, and can speak pointedly and clearly to its tenor and contents."—(Per Story, J., in United States *vs.* Britton, 2 Mason R , 464, 468.)

But again: Did Mr. Smith do anything more than merely make the application and learn that it would be granted? Did he have anything to do with the details and with the forms which the transaction probably assumed in order that the proper evidence of it might become a part of the archives of the Treasury Department? And when so formally set out, what language was used? Did the contract as there set out correspond with Mr. Smith's understanding of the proposition

made by him to the Secretary of the Treasury? Did Mr. Smith ever see the contract after it was so set out and formally reduced to writing? How can we decide what the contract was unless we have before us evidence of the facts which made it, of what was said and done by the parties when the contract was formally made and completed? The testimony of Mr. Smith does not furnish satisfactory answers to these questions.

My opinion is that the averment made in the amended petition is not sustained by the evidence.

The solicitor of the United States objects to the petitioner's claim on the ground that it is a stale demand. We have already seen that the evidence now offered by the petitioner of the payments made by the Mechanics' Bank of New York, on account of their loan to the United States, is that they gave credit therefor to the Treasurer of the United States on their deposit book. Early in the year 1811 that bank was made a deposit bank for the United States.—(8 Am. St. Papers, 516.) On the 30th of September in that year there was on deposit therein to the credit of the United States a balance of $490,516 40, and on the 23d of December in that year there was on deposit therein to the credit of the United States a balance of $675,474 34.—(Ibid., 517.) It appears from exhibit "A," annexed to William Sharp's deposition, that T. T. Tucker, Treasurer of the United States, was credited on the deposit book of the bank on the 26th of May, A. D. 1814, with $652,000, and on the 29th of June, A. D. 1814, with $1,349,550. And it appears from the report of the Secretary of the Treasury to the House of Representatives of December 2, A. D. 1814, that on the 28th of November, A. D. 1814, the United States had on deposit in that bank a balance of $222,896 14.—(Ibid, 880.) Moreover the Mechanics' Bank of New York continued in existence until the 1st day of January, A. D. 1855, a period of more than forty years after their loan to the United States was made, and never asserted any such claim as that now presented by the petitioner. In view of these facts, the inquiry becomes intensely pertinent and important *how* and *when* and *in what funds* did that bank actually pay their loan to the United States? Of what value were the deposits made therein by the United States before that bank suspended specie payments? What was the balance due to the United States on account of deposits at the time of the suspension, and how and with what funds was such balance liquidated? Was it paid in gold and silver? The presumption, arising from the lapse of time, under all the circumstances of this case, is that these questions do not admit of a solution favorable to the petitioner. Further comment on these facts is not deemed necessary.

The solicitor for the United States has objected to the deed offered in evidence by the petitioner, purporting to be a deed from the president, directors, and company of the Mechanics' Bank, in the city of New York, of the first part, to Francis W. Edmunds, Robert Kelly, and Richard Irvin, (the petitioner,) of the second part, on the ground that it is not valid and sufficient in law to give the petitioner a title to the claim now set up by him. It is not necessary for us to decide this point. It appears from the evidence that the grantees accepted the trust created by the deed; that Richard Kelly is dead; and that

J. F. Edmonds has ceased to act. Under the deed, the trustees took as joint tenants, and on the death of Kelly the trust survived to Edmonds and the petitioner. The deed itself contains no provision authorizing the trustees, or either of them, to divest themselves of the trust by merely ceasing to act; and it does not appear that there is any law of New York under which he may so divest himself of a trust. The only other modes in which Edmonds could divest himself, or be divested, of the trust, are, (1) by the assent of all the *cestuis que trust*, and (2) by the decree of a court of chancery, or other court having jurisdiction in the premises. It does not appear that either of these has been pursued. Edmonds, therefore, is still a trustee, and would be a necessary party to this proceeding, if the claim were well founded. Irvin alone could not recover it.

My opinion is, that the petitioner is not entitled to relief.

IN THE COURT OF CLAIMS.

November 19, 1860.

RICHARD IRVIN, TRUSTEE, *vs.* THE UNITED STATES.

LORING, J.

For the reasons stated by me in my opinion, read on the first hearing of the case of R. R. Ward *et al.*, assignees of Jacob Barker, I should be of opinion that the petitioners were entitled to recover the difference in value between the bills or credits, in which they paid for their stocks, and the bills or credits in which Dennis A. Smith paid for his stocks, if that difference were shown; but I think it is not, for there is no evidence to show the value of the consideration in which the petitioners paid.

It was contended in the argument that by law all debts were payable in specie, and that the presumption, therefore, was that the debt of the petitioners to the United States was paid in specie, and that such presumption must stand as proof until it was rebutted; but I think no such presumption arises. The law that debts must be paid in specie is imperative on the debtor, but not on the creditor, and the Secretary of the Treasury was as free to take bills as specie. In such case of election, therefore, what he might have done has no tendency to show what he did, which is the only question here.

The only evidence which the petitioners adduced to support their allegation, that they paid for their stock in specie or its equivalent, was the fact shown that they paid before the suspension of specie payments; but it is perfectly consistent with this fact that the bills or credits they paid in might have been below specie by one or two per cent., or a fraction of either; and on the large amounts involved in these transactions such a fraction might make a difference too material to be assumed or admitted against the United States without proof.

Therefore I think that the petitioners, on the evidence in their case, have not established the claim above specified.

Among the papers of the case is a memorandum showing that an agreement was made by Mr. Blair, when he was solicitor of this court, that testimony taken to be used in the case of R. R. Ward *et al.*, assignees of Jacob Barker, might be used in this case. But the agreement is said to be lost, and when it was made is not shown, nor whether it related exclusively to testimony then taken, or included in its scope all the testimony since taken for the rehearing of the case of R. R. Ward *et al.* And it is understood that the present solicitor has no knowledge in relation to it.

If such agreement was shown to include and to bring into this case all the evidence taken for the case of R. R. Ward *et al.*, then it would be proved that the petitioners paid for their stock in bills or credits which were equivalent to specie, and that Dennis A. Smith paid for his stock in bills or credits depreciated 16½ per cent. below par; and I should be of opinion (for the reasons stated in my opinions read in the case of R. R. Ward *et al.*) that the petitioners were entitled to recover from the United States 16½ per cent. on the stock which the petitioners held August 31, 1814, with interest at the rate of six per cent. from the time the money was received for the ten million loan.

As the burden of proving the agreement referred to is on the petitioner, and it is not proved, I am of opinion he is not entitled to recover on the item of claim referred to.

The petitioner avers, further, that on the 15th of February, 1815, Richard Smith subscribed for stock issued under the act of the 24th March, 1814, for the Farmers' Bank of Annapolis, and, by his contract with the Secretary, paid in bills or credits on the banks of the District of Columbia, then twenty-four per cent. below par. And the petitioner claims the benefit of this difference, "as terms more favorably" granted to Mr. Smith within the condition of their contract.

But I am of opinion that the averment that the loan made by Richard Smith for the Farmers's Bank of Annapolis was made under the act of March 24, 1814, and was a part of that loan, is not proved. In the report of Hon. J. A. Dallas, Secretary of the treasury of the United States, (Am. St. Papers, Finance, vol. 9, p. 153,) made December 31, 1815, that officer states the moneys received into the treasury during the year 1815, under *loans*, and specifies the loans on which the receipts were had, by the dates of the acts of Congress authorizing them; and in that specification the act of March 24, 1814, is not mentioned. This fact, coupled with the fact that at the time referred to, viz: February 15, 1815, there were in force three other loan acts, under two of which the Treasurer was authorized to receive the notes of banks of the District of Columbia, and to none of which the condition of the act of March 24, 1814, attached, disproves, in my opinion, the averment of the petitioner that the loan made by Richard Smith for the Farmers' Bank of Annapolis was made under the act of March 24, 1814.

It was objected, on the part of the United States, that the loan made by the Mechanics' Bank to the United States, for which the stock of the United States was issued to the bank, was illegal and void, because

the charter of the bank prohibited it from dealing in stock of the United States. But to the prohibition in the charter there is an exception, which authorizes or permits the bank to receive stocks of the United States as security for debts. And I think the loan by the bank to the United States, on the security of the stock of the United States, as shown here, was within the terms and spirit of that exception. The prohibition is against the trafficing of the bank in stocks of the United States, and thus speculating in them. The bank, therefore, could not buy and sell such stock for profit; but it could receive them as security for a debt or for a loan, as well from the United States as from an individual.

In the objection of form, as to the sufficiency of parties here, I concur in the opinion read by Judge Scarburgh.

On the whole case, I am of opinion that the petitioner is not entitled to relief on the present state of the evidence.

HUGHES J., did not sit in this case.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 263.

C. J. JENKINS AND W. W. MANN, ASSIGNEES OF JOHN McKINNIE.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

C. J. JENKINS AND W. W. MANN, ASSIGNEES OF JOHN McKINNIE, *vs.* THE UNITED STATES.

1. The petition of the claimant to the Court of Claims.
2. Petition to the House of Representatives, and resolution referring the same to the Court of Claims, transmitted to House of Representatives.
3. Claimant's evidence on first hearing transmitted to the House of Representatives.
4. Schedule of documents offered by the government as evidence.
5. Opinion of the court adverse to the claim.
6. Judge Loring's opinion dissenting.
7. Additional evidence offered by claimant on rehearing transmitted to House of Representatives.
8. Claimant's brief.
9. United States solicitor's brief.
10. Opinion of the court adverse to the claim, Judge Loring dissenting.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

CHAS. J. JENKINS AND WM. W. MANN *vs.* THE UNITED STATES.

Petition.

To the judges of the Court of Claims:

The petition of Charles J. Jenkins and William W. Mann showeth: That they are the assignees of John McKinne, an insolvent debtor, residing in Richmond county, in the State of Georgia, appointed such assignees by the honorable the city court of the city of Augusta, in the county and State aforesaid, under the act of said State for the relief of insolvent debtors.

That heretofore, to wit, on the —— day of ———, eighteen hundred and ———, the United States of America had recovered several judgments against Joshua E. White & Co. on custom-house bonds, and against Barna McKinne and Gabriel W. Denton, copartners, under the firm of B. McKinne & Co., as their sureties, a very small portion of which said judgments was collected when the parties defendant became, or were supposed to be for many years, and most of them now are, actually insolvent; that the said Gabriel W. Denton, about the year eighteen hundred and twenty, left the State of Georgia and removed to the State of Louisiana, where in the course of a few years he amassed a moderate fortune; that in the year eighteen hundred and thirty-four certain negotiations were entered into between the Treasury Department of the United States and the said John McKinne concerning the collection of the large balance remaining due upon said judgments, in favor of the United States, against Joshua E. White & Co. and B. McKinne & Co., by the said John McKinne, as agent of the said Treasury Department; that pending said negotiations the said John McKinne, by letter addressed to ——— ———, Solicitor of the Treasury, inquired if certain parties to said judgments, and particularly Gabriel W. Denton, were still bound by them, stating, at the same time, that if they were not, he (the said McKinne) would decline any agency in the matter; that, in answer to said inquiry, he was informed by said Solicitor that, on inquiry at the treasury, his information was, that no release had been granted to either of the parties mentioned in his letter; whereupon the said John McKinne signified his willingness to undertake said agency for an adequate allowance for his services out of such amount as he might collect; that thereupon the Secretary of the Treasury agreed to confer said agency, and actually did confer the same, upon the said John McKinne, and further agreed and promised to allow and pay to the said John McKinne, as a compensation for his services to be rendered to the said United States in said agency, twenty-five per cent. of all moneys that he should thereafter collect or secure on said judgments; that the said John McKinne afterwards, to wit, on or about the first day of January, A. D. eighteen hundred and thirty-five, accepted said agency upon the terms proposed, and entered upon it forthwith; that, being furnished with all needful authority in the premises, the said John

McKinne, at great trouble and expense, had said judgments revived, and procured an attorney-at-law, as his sub-agent, to proceed to the States of Tennessee and New York to obtain information and take measures for the recovery of said judgments; that by the exertions of the said John McKinne and his agent, after great labor and expense in travelling from place to place, the said Gabriel W. Denton was taken, in execution under said judgments, in the interior of the State of New York, by the United States marshal for said district, under the instructions and direction of said agent; that the said Gabriel W. Denton, being thus in the custody of the marshal of the United States, gave his promissory note, with four other persons as his sureties, who, as well as the principal, were abundantly able to pay the same, for the full amount of principal and interest due on said judgments, to wit, for the sum of thirty-two thousand seven hundred and ninety-six dollars and thirty cents, bearing date July twenty-fourth A. D. eighteen hundred and thirty-five, and payable twelve months after date, with six per cent. interest from the date; that the ability of the maker and sureties to pay said note was then and there certified to the Secretary of the Treasury by the deputy collector of New York, and the said note was presented and delivered by said agent at the reasury of the United States; that, by the consent and agreement of the agent of the said John McKinne, there was indorsed upon said note a condition that the said Gabriel W. Denton was to be discharged from the whole or any part thereof if released by Congress or any competent authority; that in the year eighteen hundred and thirty-six the said Gabriel W. Denton petitioned the Congress of the United States to release him from the payment of said note; that during the pending of said petition before Congress the said John McKinne gave notice of his claim, and resisted said petition on the ground of the claim, which he had acquired by virtue of his contract aforesaid with the government of the United States, as well as by a denial of the facts alleged in it; that notwithstanding the premises, an act was passed by the Congress of the United States in the year last aforesaid discharging the said Gabriel W. Denton from the payment of said note.

And your petitioners aver that upon the delivery as aforesaid of said promissory note, so secured as aforesaid, to the proper officer of the government at the treasury of the United States, the said John McKinnie had fully complied with his contract as aforesaid, and became and was entitled to receive from the Treasury Department twenty-five per cent. upon the amount of said note, to wit, the sum of eight thousand one hundred and ninety-nine dollars and seven and a half cents, with six per cent. interest thereon, from the twenty-fourth day of July, A. D. eighteen hundred and thirty-five, (the date of said note,) at the expiration of twelve months therefrom, or on the payment of said note; that the discharge of said Gabriel W. by the Congress of the United States from the payment of said note aforementioned, with knowledge of the rights acquired by the said John McKinne under his contract as aforesaid, and by reason of his faithful performance of said contract, was an act of grace to said Gabriel W.; and that from the moment of said discharge the government of the United States became and were liable to pay to the said John McKinne

the said sum of eight thousand one hundred and ninety-nine dollars and seven and one-half cents, with interest at the rate of six per cent. from the said twenty-fourth day of July, A. D. eighteen hundred and thirty-five, until paid, and are now by virtue of the assignment aforesaid so liable to your petitioners as assignees as aforesaid.

Yet the said United States, although so liable and often requested to pay your petitioners the sum of money, with interest, as aforesaid, have not paid the same, nor any part thereof, but the same to pay hitherto have refused and neglected, and yet do refuse and neglect. That said claim was presented, by the said John McKinne, to the 25th Congress of the United States, and an adverse report made thereon in the House of Representatives, at the third session; and again, by your petitioners, as assignees, to the 27th Congress, and a favorable report made thereon made to the Senate of the United States, at the third session thereof.

Your petitioners, under the insolvent laws of Georgia, are the sole representatives of said claim.

P. PHILLIPS, *Attorney.*

GEORGIA, *City of Augusta:*

Before me, William T. Gould, judge of the city court of said city, personally came Charles J. Jenkins, one of the petitioners named in the aforegoing petition, who, being duly sworn, deposeth and saith that the facts stated therein are true, in so far as they are within his own knowledge, and in so far as they are derived from the information of others he believes them to be true.

CHARLES J. JENKINS.

Sworn to and subscribed before me this 16th December, 1858.

WM. T. GOULD,
Judge City Court.

GEORGIA, *City of Augusta:*

I, David L. Roath, clerk of the city court of Augusta, do hereby certify that William T. Gould, whose name appears as judge of said city court of Augusta, the said court being a court of record, is, and was at the date of his foregoing attestation, the judge of said city court, duly commissioned and qualified; that his signature is genuine, his attestation in due form of law, and worthy of all faith and credit.

In testimony whereof, I hereunto set my hand and affix the seal of [L. S.] said court this sixteenth day of December, eighteen hundred and fifty-eight.

DAVID L. ROATH,
Clerk of City Court, Augusta.

To the honorable the Senate and House of Representatives of the Congress of the United States in Congress assembled:

The petition of John McKinne respectfully showeth: That in the year 1817 sundry bonds for duties were executed at the custom-house, Savannah, Georgia, by Joshua E. White & Co. as principals, and Barna McKinne & Co. as securities, amounting in the aggregate to upwards of twenty thousand dollars.

That the said bonds, not having been paid when at maturity, were at length sued and judgments obtained on them, in favor of the United States, against both principals and securities, and executions duly issued thereon; that in a few years thereafter these claims being still unsatisfied and large amounts due on them, Joshua E. White and Steele White, of the firm of Joshua E. White & Co., departed this life, leaving Mrs. Jane S. Jackson the sole surviving partner of the principals bound for the debt, but wholly unable (and your petitioner believes she still continues unable) to pay a single dollar more than she has already done towards the extinguishment of said judgments; that since the death of the principals above stated, Barna McKinne has also died hopelessly insolvent, leaving Gabriel W. Denton, the surviving partner of the firm of Barna McKinne & Co., fully and firmly (as your petitioner believes) bound for the payment of the large balances due on the judgments aforesaid; that in a short time after the rendition of said judgments, to wit, in or about the year 1820, the said Denton suddenly left the State of Georgia and repaired to Florida, whence he shortly proceeded to the State of Louisiana, where he finally settled, and where, by skilful and fortunate business operations, he, in the course of a few years, amassed a large fortune and became abundantly able to discharge all the debts in which his early misfortunes in Georgia had involved him, this to the United States among the number.

Your petitioner has reason to believe that this claim of the United States upon Joshua E. White & Co. had long since been given up and considered utterly hopeless by the government officers charged with its collection. Three of the parties defendant having departed this life entirely insolvent, one of the two survivors being notoriously incapable of making any additional payment, the other having permanently removed from the State where the judgments were obtained, and for many years past lost sight of by the collecting officers, your petitioner was fully persuaded that, unless he should interpose in behalf of the United States and render available to them the knowledge he possessed, no further attempt for the collection of the debt in question would ever have been made. That this persuasion of your petitioner was well founded is fully proven by official letters, to which allusion will hereafter be made, and particularly by a report upon this subject made to the Secretary of the Treasury by V. Maxcy, esq., the Solicitor, dated September 4, 1834, in which it is expressly admitted that the debt was considered hopeless without the aid of "some person who has more information respecting the means of collecting it than is possessed by the officers of the government." From this

report, too, it appears that in the year 1831 the district attorney for Georgia, in his letter advising the Solicitor of the Treasury of the last collection that had been made on account of these claims, and stated that "the judgments remain unsatisfied, that all the defendants are dead but Jane S. Jackson, and that she is insolvent," whereby it seems that Gabriel W. Denton, whom your petitioner knew to be in life and in affluent circumstances, the very individual, too, out of whom your petitioner knew the money could only be made, and was supposed by the collecting officers to be dead, and so reported to the Treasury Department. The Solicitor then added, "No report has been received from the attorney or marshal authorizing the belief that anything further can be collected on these judgments." But your petitioner, apprised of the original liability of the defendants and the entire solvency of Gabriel W. Denton, (who was reported dead,) well knew that if your petitioner could be made the agent of the United States and charged with the collection of the executions, with authority to pursue Mr. Denton by such legal steps as your petitioner might deem advisable, the whole amount, principal and interest, of this supposed desperate debt might be saved to the country. Accordingly in the year 1834 a proposal was made to the honorable the Secretary of the Treasury by which, upon certain conditions therein specified, your petitioner proposed to undertake the collection of the large balances yet remaining due, which proposition was promptly referred by the Secretary to the Solicitor of the Treasury for information on the condition of the claim. In conformity to this reference a report was made on the 4th of September, 1834, stating the payments that had been previously made, showing large balances to be yet due, and recommending the acceptance of your petitioner's offer, stating as a reason for this recommendation that the recovery of the debt was hopeless without the aid of some person who had more information respecting the means of collecting it than was possessed by the officers of the government.

Upon the reception of this report the Secretary of the Treasury confided to your petitioner the agency, agreeing that your petitioner should receive as compensation for his services twenty-five per cent. of the net amount recovered. (Copies of the letters of the Secretary of the Treasury giving the appointment to your petitioner dated September 8, 1834, and so much of that of the Solicitor of the Treasury notifying your petitioner of the same as has reference to this subject, are hereunto appended, and marked A and B.) Thus empowered, your petitioner entered upon the prosecution of his agency; before, however, any active measures were taken against Mr. Denton, your petitioner proceeded to make further inquiry respecting the *continued* liability of *that* defendant; and whilst your petitioner, did not doubt such continued liability, yet, to guard against the possibility of a fruitless expenditure of time, trouble, and money, which your petitioner could illy afford, addressed a letter on the 8th of December, 1834, to the Solicitor of the Treasury requesting to be informed whether all the defendants continued fully bound for the payment of the judgments in question. To this inquiry the Solicitor, by letter dated December 23, 1834, replied that upon inquiry at the treasury he had been

informed that no release had been granted by that department to either of the persons originally bound to pay the debt. With this assurance your petitioner was perfectly content, and spared neither trouble nor expense in bringing the agency with which he had been intrusted to a successful termination, never even for a moment supposing that the information obtained from the Solicitor of the Treasury relative to these claims was not correct, or that any department of government would interpose the least barrier to a speedy payment of the debt after your petitioner should, beyond all possible doubt, render its collection certain. Before, however, Mr. Denton could be proceeded against with effect, it was of course necessary that your petitioner should obtain possession of the executions which had been issued upon the judgments aforesaid. This was found by your petitioner to be a work of difficulty, trouble, and expense. After much fruitless correspondence, in the course of which your petitioner found it necessary to visit the late district attorney, (M. H. McAllister, esq.,) at Milledgeville, it was ascertained that the *fi. fa.'s* had several years previously been sent to the marshal of West Tennessee. Upon further inquiry, your petitioner learned that the marshal to whom they had been sent was dead, and that his successor could not find them. At length your petitioner despatched a special messenger (Mr. Mann) for the recovery of the lost papers, and obtain such other necessary information as might be in his power. The *fi. fa.'s* were found at Nashville, returned to the clerk's office in Savannah, and *ca. sa.'s* taken out in their stead. With these your petitioner's sub-agent (Mr. Mann) was proceeding from Nashville to New Orleans in search of Mr. Denton, and had advanced as far as Alabama, when, having ascertained that the defendant had left that place for the north by the way of the west, your petitioner's sub-agent (having with him a circular from the Solicitor of the Treasury, addressed generally to the attorneys and marshals of the United States, requiring them officially to aid Mr. Mann whenever and wherever he should ask their assistance, a copy of which circular is hereunto annexed, marked C,) pursued Mr. Denton to Kentucky, and thence to the State of New York, where, after much further expense of time and money, he was, by virtue of the circular aforesaid, arrested at Saratoga by the deputy marshal, and conducted to the city of New York, when the whole amount of the principal and interest was secured by a note signed by Denton and five other individuals, several of whom were notoriously responsible each of them for a much larger amount than the whole of the debt thus secured. Upon the execution of this note Mr. Denton was discharged from custody, and your petitioner's sub-agent, considering his business as accomplished, returned home. Anxious as he only was to make the debt undoubtedly secure, your petitioner's sub-agent was willing, in the settlement just mentioned, to extend to Mr. Denton every indulgence consistent with object. Accordingly, by the terms of the settlement, Mr. Denton, on giving undoubted security, was allowed twelve months' indulgence, in order that he might ascertain the result of a contemplated application to Congress for relief, and be saved the great inconvenience of raising at once so large a sum of money. Your petitioner never, throughout his whole agency, even

for one moment, doubted Mr. Denton's continued liability, and at the time of the settlement in 1835, at New York, neither your petitioner's sub-agent nor Mr. Denton himself believed the latter in *any* manner *entitled* to relief, as Mr. Denton only hoped to obtain it by the courtesy and generosity of Congress. Relying upon the assurances of government, honestly given, honestly received, and honestly and efficiently acted upon, your petitioner would have collected the full amount of the judgments, principal and interest, had the assurances given and acted on as aforesaid been *true in fact*. Congress at its last session said they were not true, and that the debt was *not* due by Denton. It is immaterial to your petitioner whether government knew or was ignorant of the release it granted to Mr. Denton, the injury suffered by your petitioner is the same. He acted upon the express assurance of government that *all* the defendants continued liable for the debt, in doing which he has incurred great expense of time, labor, and money. He has diligently performed his trust, faithfully served the country, and he now presents himself before you and asks to be put in the situation he would have been had the government's assurance (upon the faith of which he acted) been correct. If one must lose, shall it be the honest, faithful, and efficient agent, or the mistaken and wealthy principal, who gave to that agent the incorrect information which induced him to incur the expense he did, and led to his failure? Your petitioner will not believe that a claim founded in such palpable justice as his is, will in vain be presented to the national legislature. He will not believe that his government will employ the time and labor of a citizen, encourage him to spend large sums of money in its service, and finally, when, by an act of the government itself, he fails to effect the good he contemplated, suffer this expense of time, labor, and money in its service to pass unremunerated after an urgent and respectful solicitation for justice.

The amount secured in 1835, to be paid in 1836, was, principal - - -	$32,796 30	
From which should be deducted additional credits to which the Solicitor of the Treasury said in his letter dated August 21, 1835, these bonds were entitled, including interest to July, 1835 - - -	2,569 45	
		$30,226 85
Interest on 30,226 85 from July, 1835, to July, 1836, at 6 per cent., is - - - - - -		1,813 61
		32,040 46
From this amount, being the gross sum due July 24, 1836, deduct $1,113 35 expended by sub-agent in nearly three months' travelling expenses to Milledgeville, office fees, postages, &c., &c. - - - -		1,113 35
		30,927 11

One fourth part of which is the amount secured to the government and due to petitioner - - -	$7,731 77
To which add expenses, &c., as above stated - -	1,113 35
And it leaves due your petitioner the sum of - -	8,845 12

And he earnestly prays your honorable body to pass an act, awarding to him the said last sum of eight thousand eight hundred and forty-five dollars and twelve cents, thus extending that relief to your petitioner, which by every rule of honor and justice he feels himself fully entitled to. And, as in duty bound, your petitioner will ever pray, &c.

JOHN KcKINNE.

THIRTY-FIFTH CONGRESS, FIRST SESSION.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES, *May* 22, 1858.

On motion of Mr. Stephens,

Ordered, That the Clerk of this House be directed to transmit the petition and papers in the case of John McKinne to the Court of Claims.

Attest: J. C. ALLEN, *Clerk*.

II.

Copy of a letter from the Secretary of the Treasury to V. Maxcy, esq., Solicitor of the Treasury.

TREASURY DEPARTMENT, *September* 8, 1834.

SIR: In reply to your communication of the 4th instant, on the application of John McKinne, I have to state that, under all the circumstances, I assent to the payment of twenty-five per cent. for his services in the collection of the eight thousand dollars, or any larger sum. But I do not believe that it is competent for me to make any compromise for the residue. The aid of the district attorney will of course be given in the usual way.

I am, very respectfully, &c.,

L. WOODBURY,
Secretary of the Treasury.

V. MAXCY, Esq.,
Solicitor of the Treasury.

Extract from a letter of the Solicitor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
October 14, 1834.

SIR: Your letter of the 28th ultimo to the Secretary of the Treasury, in relation to the outstanding judgments of the United States against the late Joshua E. White & Co., and proposing to lend your assistance to recover the same, or a portion of it, on certain conditions, has been duly received; and I now enclose you a copy of his letter to me in which he accepts the terms proposed, so far as to allow you twenty-five per cent. of the amount received, and to afford you the assistance of the district attorneys in such districts as you may find it necessary to institute legal proceedings in.

I have this day written to the district attorney at Savannah, Georgia, instructing him to give his assistance and counsel whenever it may be required; and whenever you may want the assistance of the United States attorneys in any other districts, and will advise me thereof, the necessary instructions will be given.

I am, very respectfully, sir, your obedient servant,

V. MAXCY,
Solicitor of the Treasury.

Colonel JOHN MCKINNE,
Augusta, Georgia.

III.

The Solicitor to W. W. Mann.

OFFICE OF THE SOLICITOR OF THE TREASURY,
May 27, 1835.

SIR: I have this morning received a letter from Colonel John McKinne, of Augusta, Georgia, advising me that he had appointed you his sub-agent in the collection of the debt due the United States on judgments against the late Joshua E. White & Co. and their securities, and that you were about to set out for New Orleans in the execution of the trust, and requesting that circular letters to the attorneys and marshals of the United States should be forwarded to you at New Orleans which would enable you to command the services of those officers in whatever district you might want them in the execution of the trust.

In compliance with this request, I hasten to forward you the enclosed. You will please report regularly to this office your progress in this business. Should this general letter not answer the purpose, specific

instructions will be given to whatever attorneys, marshals, and clerks you may desire, so soon as you advise me that they are wanted.

I am, very respectfully, sir, your most obedient servant,

V. MAXCY,
Solicitor of the Treasury.

W. W. MANN, Esq.,
New Orleans.

(The circular alluded to delivered to the marshal of New York.)

Extract from a letter of the Solicitor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 23, 1834.

SIR: Your letter of the 15th of December, relating to the case of Joshua E. White & Co. and their sureties, was duly received.

In reply, I have to state that I wrote the United States attorney for the district of Georgia on the 14th of October last to render you any aid you might require in the State of Georgia. Upon application to him, he would doubtless cause you to be furnished with any process you may require in the execution of your agency; and I recommend that you address your application to him, instead of to Mr. Glenn. I enclose you, however, a letter to Mr. Glenn on the subject, which you may use if you think it necessary. I also enclose you a letter to Mr. Carleton, United States attorney at New Orleans, on the same subject.

Upon inquiry at the treasury, I am informed that no release has been granted by that department to either of the persons mentioned in your letter.

I am, very respectfully, sir, your most obedient servant,

V. MAXCY,
Solicitor of the Treasury.

Colonel JOHN MCKINNE,
Augusta, Georgia.

IV.

Appointment of Jenkins and Mann as assignees.

COURT OF COMMON PLEAS, CITY OF AUGUSTA, FEBRUARY TERM, 1839.

A. R. RALSTON *vs.* JOHN MCKINNE. } *Ca. sa.—Arrest and application for the benefit of the insolvent debtors' act.*

The defendant, John McKinne, having filed his schedule in terms of the law, and having proven notice on the following persons, to wit: A. R. Ralston, Rountree & Hill, Otis & Swan, N. K. Butler & Co., J. P. Setze, Mrs. E. H. Tubman, executrix of Richard Tubman,

deceased, James Peay, Robert Bledsoe, and A. A. Smets, and having taken the oath in such case prescribed: *Ordered*, That he be discharged, and that William W. Mann and Charles J. Jenkins be appointed assignees for defendant.

At February term of the court of common pleas, held in the city of Augusta, county of Richmond and State of Georgia, in the year eighteen hundred and thirty-nine, before the honorable John W. Wilde, judge of said court, John McKinne having appeared pursuant to the tenor of his bond returnable to this court, and proven notice to the several creditors, whose names are indorsed hereon, took and subscribed the following oath:

I, John McKinne, do solemnly swear, in the presence of Almighty God, that I am not possessed of any real or personal estate, debts, credits or effects, securities or contracts whatsoever, my wearing apparel, bedding for myself and family, and the working tools or implements of my trade or calling, together with the necessary equipments for a militia soldier, excepted, other than are contained in the schedule now delivered, and that I have not, directly or indirectly, since my imprisonment or before, sold, leased, assigned, or otherwise disposed of, or made over in trust for myself or otherwise, any part of my lands, estate, goods, stocks, money, debts, securities or contracts, whereby any money may hereafter become payable, or any real or personal estate whereby to have or expect any benefit or profit to myself, my wife, or my heirs. So help me God.

JOHN McKINNE.

Test: J. W. WILDE, *Judge.*

Notice served on Messrs. A. R. Ralston, Rountree & Hill, Otis & Swan, N. K. Butler & Co., J. P. Setze, E. H. Tubman, executrix of Richard Tubman, James Peay, Robert Bledsoe, and A. A. Smets.

STATE OF GEORGIA, *City of Augusta:*

I, David L. Roath, clerk of the city court of Augusta, (which court was formerly the court of common pleas of said city,) hereby certify that the foregoing is a true copy of the order for the discharge of John McKinne, an applicant for the benefit of the insolvent debtors' act of the State of Georgia, taken at the February term, 1839, of said court, together with the oath taken and subscribed by the said John McKinne at the same term of said court, as the same are found upon the records of my office. Witness my hand and the seal of said court this twenty-sixth day of July, A. D. eighteen hundred and fifty-nine.

[L. S.] DAVID L. ROATH,
Clerk City Court, Augusta.

I, William T. Gould, judge of the city court of Augusta, (formerly called the court of common pleas of the city of Augusta,) certify that David L. Roath, whose name appears to the foregoing certificate, is the clerk of said court, being a court of record that said certificate is written and subscribed in the proper handwriting of said David L. Roath; that the seal attached is the seal of said court; that said certificate is in due form of law; and that full faith and credit ought to be given thereto.

Given under my hand this thirtieth day of July, 1859.

WM. T. GOULD,
Judge City Court.

V.

Exemplification of record, &c.

DISTRICT OF GEORGIA:

To the honorable the judge of the district court for said district:

The petition of the United States showeth: That Joshua E. White, Steele White, and Jane Jackson, Barna McKinne and Gabriel W. Denton, of said district, are indebted to the United States in the sum of eighteen thousand eight hundred and seventy-six dollars. For that whereas the said Joshua E. White, Steele White, and Jane Jackson, then trading under the firm of Joshua E. White & Co., and Barna McKinne and Gabriel W. Denton, then trading under the firm of Barna McKinne & Company, on the thirteenth day of October, in the year of our Lord one thousand eight hundred and seventeen, within the district aforesaid and the jurisdiction of this honorable court, by their certain writing obligatory, sealed with their seals, and now here shown, acknowledged themselves jointly and severally to be held and firmly bound to the United States in the sum of ten thousand three hundred and seventy-eight dollars and forty cents, to be paid to the United States when thereto required. And also whereas the said Joshua E. White, Steele White, and Jane Jackson, then trading as aforesaid, and the said Barna McKinne and Gabriel W. Denton, then trading as aforesaid, on the third day of December, in the year of our Lord one thousand eight hundred and seventeen, within the district aforesaid and the jurisdiction of this honorable court, by their certain other writing obligatory, sealed with their seals, and to this honorable court now here shown, acknowledged themselves jointly and severally to be held and firmly bound to the United States in the sum of two thousand six hundred and sixty-eight dollars and twenty cents, to be paid to the United States when thereto afterwards required. And also whereas the said Joshua E. White, Steele White, and Jane Jackson, then trading as aforesaid, and the said Barna McKinne and Gabriel W. Denton, then trading as aforesaid, on the third day of December, in the year of our Lord one thousand eight hundred and seventeen, within the district aforesaid and within the jurisdiction of this

honorable court, by their certain writing obligatory, sealed with their seals, and to the court now here shown, bearing date the day and year aforesaid, acknowledged themselves to be jointly and severally held and firmly bound to the United States in the sum of five thousand eight hundred and twenty-nine dollars and forty cents, to be paid to the United States when thereto required. Yet the said Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, though often required, have not, nor hath either of them, paid the said several sums of money in said writings obligatory specified, or any part thereof, but to pay the same have and do still refuse, to the damage of the United States fifty dollars.

Wherefore the United States pray process may issue requiring the said Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, personally or by attorney, to be and appear before the judge of said court at a court to be holden at Savannah on the second Tuesday of August next, to answer the United States in an action of debt, and so forth.

RICHARD W. HABERSHAM,
District Attorney.

DISTRICT OF GEORGIA, *in the District Court of the said District:*

The President of the United States to the marshal of said district, greeting:

THE UNITED STATES
vs.
JOSHUA E. WHITE and others. } Debt.

The defendants, Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, are hereby required, personally or by attorney, to be and appear before the honorable the judge of the district court at Savannah, at a court to be held on the second Tuesday of August next, to answer the United States in an action of debt to their damage fifty dollars, as in default of such appearance the said judge will proceed as to justice shall appertain.

Witness the honorable William Davies, judge of said court, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and nineteen.

RICHARD W. HABERSHAM,
District Attorney.

[L. S.] JOHN S. BULLOCH, *Clerk.*

Indorsed:

8.

United States, Georgia District.—District Court, August term, 1819.

3 bonds.

THE UNITED STATES *vs.* JOSHUA E. WHITE AND OTHERS.

Debt—Original.

P.....	$10,378 40	C.....	$5,189 20
P.....	2,668 20	C.....	1,334 10
P.....	5,829 40	C.....	2,914 70

Entered:

Received Savannah, May 20, 1819.

L. H. McINTOSH,
Deputy Marshal.
HABERSHAM,
District Attorney.

DISTRICT OF GEORGIA, *August Term*, 1819:

Served a copy on the defendants, J. E. White and Steele White, by leaving it at their store; served a copy on G. W. Denton in person; served a copy on B. McKinne, by leaving it with his attorney; the defendant, Jane Jackson, is without the State. The return of

L. H. McINTOSH,
Deputy Marshal.

Order for judgment against all the defendants, except Jane Jackson, August 10, 1819.

W. DAVIES,
District Judge.

Georgia.—District Court, August Term, 1819.

THE UNITED STATES
vs.
JOSHUA E. WHITE and others, } Debt No. 8.

Afterwards, to wit, on the tenth day of August, A. D. one thousand eight hundred and nineteen, came the United States, by Richard W. Habersham, their attorney; and the said defendants, although solemnly called, came not, but made default, and said nothing in bar or preclusion of the action of the United States. Therefore it is considered that the said United States do recover against J. E. White and others their debt and damages, by occasion of the detention of that debt, to nineteen dollars and forty cents, by the court here adjudged

to the said United States, with their assent. And the said defendants, in mercy, &c.

RICH'D W. HABERSHAM,
District Attorney.

Judgment signed this 24th day of August, A. D. 1819.
GEORGE GLEN, *Clerk.*

Upon this judgment the following execution of *fieri facias* appears to have been issued against the defendants on the 24th day of August, 1819, of which the following is a copy:

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the said district, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of eighteen thousand eight hundred and seventy-six dollars, which the United States lately, in the district court for said district, recovered against them, as also nineteen dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Barna, and G. W. are convicted, as appears of record; and have you that money before the judges of the said court, in the term of November next, to render to the said United States the debt and damages aforesaid, together with this writ.

Witness the honorable William Davies, judge of said court, this twenty-fourth day of August, in the year one thousand eight hundred and nineteen.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

67.

District Court, Georgia, November term, 1819.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, BARNA MCKINNE, and G. W. DENTON.

Debt cond	$5,189 20
Interest, October 13, 1818. Cond	1,334 10
Interest, December 8, 1818. Cond	2,914 70
Interest, December 3, 1818. Costs	19 40
1 *fi. fa*	2 68

HABERSHAM.

At the August term of the said district court, 1819, there would appear from the judgment and execution dockets that four other judgments were recovered by the United States *vs.* Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, the original records of which said proceedings, after diligent search for the same amongst the papers in my office, I have been unable to find to enable me to give an exemplification thereof. I presume, therefore, that they have been either mislaid or are lost. The following, however, are copies of the executions which appear to have been issued on said judgments, and which are of file and of record in my office.

CHARLES S. HENRY,
Clerk of District Court.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the said district, greeting:

It is hereby commanded that of the goods and chattels, lands, and tenements of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of ten thousand three hundred and seventy-eight dollars and thirty-eight cents, which the United States lately, in the district court for said district, recovered against them, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and G. W. are convicted, as appears of record; and have you that money before the judges of the said court, in the term of November next, to render to the said United States the debt and damages aforesaid, together with this writ.

Witness the honorable William Davies, judge of said court, this twenty-fourth day of August, in the year one thousand eight hundred and nineteen.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

62.

District Court, Georgia, November term, 1819.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and G. W. DENTON.

Debt cond.....	$5,189 19
Interest, August 13, 1818.	
Costs.....	21 40
1 *fi. fa*.....	2 68

HABERSHAM.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the said district, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of two thousand six hundred and sixty-eight dollars and eighteen cents, which the United States lately, in the district court for said district, recovered against them, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of the said court, in the term of November next, to render to the said United States the debt and damages aforesaid, together with this writ.

Witness the honorable William Davies, judge of said court, this twenty-fourth day of August, in the year one thousand eight hundred and nineteen.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed:

64.

District Court of Georgia, November term, 1819.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GARRIEL W. DENTON.

Debt cond.....	$1,334 09
Interest, October 3, 1818.	
Costs.....	21 40
1 *fi. fa*.....	2 68

HABERSHAM.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the said district, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of five thousand eight hundred and twenty-nine dollars and forty-two cents, which the United States lately, in the district court for said

district, recovered against them, as also twenty-one dollars and forty-cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of said court, in the term of November next, to render to the said United States the debt and damages aforesaid, together with this writ.

Witness the honorable William Davies, judge of said court, this twenty-fourth day of August, in the year one thousand eight hundred and nineteen.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed:

66.

District Court of Georgia, November term, 1819.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt cond.....	$2,914 71
Interest, October 3, 1818.	
Costs.....	21 40
1 *fi. fa*.....	2 68

HABERSHAM.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the said district, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of three thousand two hundred and seventy-seven dollars and eighty cents, which the United States lately, in the district court for said district, recovered against them, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of the said court, in the term of November next, to render to the said United States the debt and damages aforesaid, together with this writ.

Witness the honorable William Davies, judge of said court, this

twenty-fourth day of August, in the year one thousand eight hundred and nineteen.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed:

65.

District Court of Georgia, November term, 1819.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and G. W. DENTON.

Debt cond	$1,638 90
Interest, September 15, 1818.	
Costs	21 40
1 *fi. fa.*	2 68

HABERSHAM.

The foregoing five executions of *fieri facias* issued upon said judgments, as appears from the execution docket, as also from the executions themselves returned and filed, were renewed regularly every year down to the twenty-third day of November, one thousand eight hundred and twenty-six, when the nine *alias fi. fa.s* were issued thereon. The following are copies of said *fi. fa.s*, with the indorsements as they appear thereon, with the exception of *fi. fa.* No. 4, which has no indorsement thereon, and which is therefore omitted:

STATE OF GEORGIA, *District Court*, } *ss*: Fiera facias, in debt.

The President of the United States to the marshal of the district of West Tennessee, greeting:

It is hereby commanded, as before, that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of eighteen thousand eight hundred and seventy-six dollars, which the United States lately, in the district court for said district, recovered against them for their debt, as also nineteen dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of the said court, in the term of May next, to render to the said United States for their debt and damages aforesaid, together with this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this

twenty-third day of November, in the year of our Lord one thousand eight hundred and twenty-six.

RICH'D W. HABERSHAM,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

5.

Georgia District Court, May term, 1827.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt cond	$5,189 20
Interest October 13, 1818.	
Cond	1,334 10
Interest December 8, 1818.	
Cond	2,914 70
Interest December 3, 1818.	
Costs	19 40
9 *fi. fa.s*	24 12

Proceed immediately.

RICHARD W. HABERSHAM,
District Attorney.

Served this execution, February 17, 1827, on sundry tracts or parcels of land in the county of Bedford and State of Tennessee, in all five thousand and sixty and one third acres, a schedule of which is attached to execution No. 1, herewith returned, and advertised, agreeably to law, to be sold at the court-house in the town of Nashville, on the 9th day of April, 1827.

R. PURDY, *M. W. Ten.*
By J. M. SMITH, *D. M.*

The above sale was this day postponed until 9th June next.

R. PURDY, *M. W. Ten.*
By J. M. SMITH, *D. M.*

DISTRICT OF GEORGIA, *District Court,* } *ss:* Fieri facias, in debt.

The President of the United States to the marshal of the district of West Tennessee, greeting:

It is hereby commanded, as before, that of the goods and chattels, lands and tenements, of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and G. W. Denton, you cause to be made the

sum of ten thousand three hundred and seventy-eight dollars and thirty-eight cents, which the United States lately, in the district court for said district, recovered against them for their debt, as also twenty-one dollars and forty cents, for their damages, costs, and charges, which were awarded to the said United States, for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W., are convicted, as appears of record, and have you that money before the judges of the said court, in the term of May next, to render to the said United States for their debt and damages aforesaid, together with this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this twenty-third day of November, in the year of our Lord one thousand eight hundred and twenty-six.

RICHARD W. HABERSHAM,
District Attorney, Georgia.

Indorsed thereon:

1.

Georgia District Court, May term, 1827.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt cond.....	$5,189 19
Interest, August 13, 1818.	
Costs.....	21 40
9 *fi. fa.s*.....	24 12

Proceed immediately.

RICHARD W. HABERSHAM,
District Attorney.

Indorsed on the foregoing execution:

Served this execution February 17, 1827, on sundry tracts or parcels of land in the county of Bedford and State of Tennessee, in all five thousand sixty and one-third acres, a schedule of which is hereto attached, and advertised agreeably to law, to be sold at the court-house in the town of Nashville on the 9th day of April, 1827.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

The above sale was this day postponed until the 9th of June next.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

APRIL 9, 1827.

Schedule of the property served on, as attached to said execution.

Served, February 17, 1827, on five thousand sixty and one-third acres of land in Bedford county, Tennessee, as follows, to wit: one tract, containing, more or less, 642 acres, being part of a 5,000-acre tract granted by the State of North Carolina to John G. and Thomas

Blount, bounded on the east, south, and west by the South or Barren fork of Duck river, and on the north and northwest by two tracts or parcels of land, one commonly called Boyd's old place and the other Picken's old place; which tract is commonly known and called Adams's tract. Also one other tract, containing, more or less, 309 acres, commonly called Wall's old place, granted as aforesaid, bounded south by the South or Barren fork of Buck river, west by Wm. Carter's, Elias Tate's, and Furgus Hall's land, &c. Also one other tract, containing 395 acres, commonly called Boyd's old place, granted as aforesaid, bounded south by the South or Barren fork of Buck river and a tract commonly called Adams's tract, west by a tract containing 266 acres and by William Cribbs's land, &c. Also 800 acres, commonly called Caney Hollow, being part of two 5,000-acre tracts, granted as aforesaid, bounded on the south by Boyd's old place, William Cribbs's land, and G. Whitson's old place; west by Moses Payne's and Willis Green's land, &c. Also one other tract, containing 348 acres, commonly called Roaring Spring place, being part of a 5,000-acre tract, granted as aforesaid; bounded south by Wall's old place, west by Furgus Hall's, &c. Also one other tract, containing 150 acres, being part of a 5,000-acre tract, granted as aforesaid; bounded south by Wilkins's land, west by Jacob Troxler's, &c. Also one other tract, containing 133⅓ acres, being, also, part of a 5,000-acre tract, granted as aforesaid; bounded on the south by Vincent Smith and George Newton's land, west by Garison fork of Buck river, &c. Also one other tract, containing 166 acres; bounded on the south by Adams's place and South fork of Duck river, west by Widow Roberts's land, &c. Also one other tract, containing 317 acres, commonly called Whiston's old place, being, also, part of a 5,000-acre tract, granted as aforesaid, and being, also, a part of another 5,000-acre tract, granted as aforesaid; bounded on the south by the South or Barren fork of Duck river, west by Boyd's old place, &c. Also one other tract, containing 1,900 acres, being, also, part of a 5,000-acre tract, granted as aforesaid; beginning at the northeast corner of grant No. 233, bounded east by the east boundary line of said grant, south by John Baidson's and Shook's land.

ROBERT PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

The sale of the above described land was this day postponed until Saturday, the 9th day of June next, by the instructions of A. Balch, esq., agent for the United States in the above case.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

APRIL 9, 1827.

Indorsed on the foregoing execution a credit, as follows:

Received on this judgment, in part, August 16, 1821, from the assignees of Stebbins & Mason, eleven hundred and fifty-four dollars and eighty cents, and at sundry other times two thousand six hundred dollars.

R. W. H., *District Attorney.*

$3,754.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the district of West Tennessee, greeting:

It is hereby commanded, as before, that of the goods and chattels, lands and tenements of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of two thousand six hundred and sixty-eight dollars and eighteen cents, which the United States lately in the district court recovered against them for their debt, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of said court in the term of May next, to render to the said United States for their debt and damages aforesaid, together with this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this twenty-third day of November, in the year of our Lord one thousand eight hundred and twenty-six.

RICH'D W. HABERSHAM,
District Attorney, Georgia.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed on the foregoing execution:

3.

Georgia District Court, May term, 1827.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and G. W. DENTON.

Debt cond.....	$1,334 09
Interest October 3, 1818.	
Costs.....	21 40
9 *fi. fa.s*.....	24 12

Proceed immediately.

RICH'D W. HABERSHAM,
District Attorney.

Served this execution February 17, 1827, on sundry tracts or parcels of land in the county of Bedford and State of Tennessee, in all five thousand sixty and one-third acres, a schedule of which is attached to execution No. 1, herewith returned, and advertised to be sold at the court-house in the town of Nashville on the 9th day of April, 1827.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

The above sale was postponed until the 9th of June next.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

APRIL 9, 1827.

DISTRICT OF GEORGIA, *District Court, ss:*

The President of the United States to the marshal of the district of West Tennessee, greeting:

It is hereby commanded, as before, that of the goods and chattels, lands and tenements of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, you cause to be made the sum of three thousand two hundred and seventy-seven dollars and eighty cents, which the United States lately in the district court for said district recovered against them for their debt, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you that money before the judges of the said court in the term of May next, to render to the said United States for their debt and damages aforesaid, together with this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this twenty-third day of November, in the year of our Lord one thousand eight hundred and twenty-six.

RICH'D W. HABERSHAM,
District Attorney, Georgia.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

2.

Georgia District Court, May term, 1827.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and G. W. DENTON.

Debt cond.....	$1,638 90
Interest, September 15, 1818.	
Costs.....	21 40
9 *fi. fa.s*.....	21 44

Proceed immediately.

RICH'D W. HABERSHAM,
District Attorney.

Indorsed on the foregoing execution as follows, to wit:

Served this execution, February 17, 1827, on sundry tracts of land in the county of Bedford and State of Tennessee, in all five thousand sixty and one-third acres, a schedule of which is attached to execution No. 1, herewith returned, and advertised to be sold at the court-house in the town of Nashville on the 9th day of April, 1827.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

The above sale was postponed until the 9th of June next.

R. PURDY, *M. W. Tenn.*,
By J. M. SMITH, *D. M.*

APRIL 9, 1827.

UNITED STATES, DISTRICT OF GEORGIA, *District Court,* } *ss:* Venditioni exponas.

The President of the United States to the marshal of the district of West Tennessee, greeting:

Whereas you were lately commanded that of the goods and chattels, lands and tenements of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and G. W. Denton, you should cause to be made the sum of ten thousand three hundred and seventy-eight dollars and thirty-eight cents, which the United States lately in said court recovered against them for their debt, as also twenty-one dollars and forty cents for their damages, costs, and charges, which were awarded to the said United States for the detention of said debt, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. were convicted, as appears of record, and that you should have that money before the judge of the said court in the term of May then next, to render to the said United States for their debt and damages aforesaid, together with the said writ:

And whereas, you did at that day return that by virtue of said writ you had levied on five thousand and sixty and one-third acres of land in Bedford county, Tennessee, as follows, to wit: One tract, containing, more or less, 642 acres, commonly known and called Adams' tract; also, one other tract, containing, more or less, 309 acres, commonly called Wall's old place; also, one other tract, containing 395 acres, commonly called Boyd's old place; also, 800 acres, commonly called Caney Hollow; also, one other tract, containing 348 acres, commonly called Roaring Spring place; also, one other tract, containing 150 acres; also, one other tract, containing 133⅓ acres; also, one other tract, containing 266 acres; also, one other tract, containing 317 acres, commonly called Whitson's old place; also, one other tract, containing 1,900 acres; which said tracts of land remained in your possession unsold on account of the sale thereof being postponed.

You are therefore hereby commanded that you sell or cause to be sold the tracts of land aforesaid by you in form aforesaid taken, and all of them, for the best price that can be got for the same, and at least for the debt and damages aforesaid. And have you the money arising from the sale aforesaid before the said judge, at Savannah, in the term of November next, to render to the said United States for their debt and damages aforesaid; and have you then there this writ.

Witness the honorable Jeremiah Cuyler, judge of said district court, this fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty-seven.

M. H. McALLISTER,
District Attorney, Georgia.

[L. S.] GEORGE GLEN, *Clerk.*

United States, Georgia District Court, November term, 1827.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA McKINNE, and GABRIEL W. DENTON.

Debt cond.....	$5,189 19
Interest, August 13, 1818.. .	
Costs.....	21 40
10 *fi. fa.s*.....	26 80
Vend. expo.....	2 68

McALLISTER, *District Attorney.*

Indorsed on the foregoing execution of *venditioni exponas* is the following statement and return, viz:

Agreeably to the within order, I proceeded to sell at public auction at the court-house in the town of Nashville, on Saturday, the 22d day of September, 1857, after giving full forty days notice of the time and place of sale in the Nashville Republican and State Gazette, a newspaper printed in said town of Nashville, in the district of West Tennessee, and then and there sold all the within described property, (except one tract of land of 642 acres, the sale of which was postponed by order of the agent for the United States) to the following persons, and the several sums affixed to their names, respectively, to wit:

309	acres to James Erwin, at	$1	00	per acre.....		$309 00
348	acres to James Erwin, at		29	per acre.....		100 92
133⅓	acres to James Erwin, at	2	37½	per acre.....		316 66
266	acres to James Erwin, at	3	00	per acre.....		798 00
395	acres to L. F. Wood, at	1	25	per acre.....		493 75
800	acres to L. F. Wood, at		38	per acre.....		304 00
317	acres to L. F. Wood, at	2	31	per acre.....		732 27
1,900	acres to L. F. Wood, for	.....		.....		1,100 00
150	acres to Alfred Balch, at	3	12	per acre.....		468 00
	Total amount.....					3,533 60
Deduct for court costs.....					$198 44	
Postage paid by marshal.....					2 50	
Printer's fees.....					72 00	
Marshal's commissions on amount of sales.....					118 67	
Agent's commission on same, at 5 per cent.....					176 68	
						568 29
						2,965 31

Notes taken at one, two, and three years, for two thousand nine hundred and sixty-five dollars and thirty-one cents, agreeably to the terms of sale.

ROBERT PURDY,
Marshal West Tennessee.
By J. M. SMITH,
Deputy Marshal.

(Attached to the foregoing execution of *venditioni exponas* on a separate paper:)

The lands sold under the execution to which this paper is appended brought the net sum of twenty-nine hundred and sixty-five dollars and thirty-one cents, which was divided into two equal parts, one-half to the Bank of the United States, the assignee of the mortgage of said lands. On the exhibition of the mortgage of said lands, executed, proved, and registered, prior to the date of the judgments in favor of the United States, I compromised the demand and agreed to take one-half produced by the sale of the lands, and the agent of the Bank of the United States the other half, the credits to commence in equal proportions from the first note falling due. On the above execution a credit is to be placed of the amount of the said half of the proceeds of said sale, and a credit on the whole of the four executions for the costs which have been paid into the office at Savannah, whence said executions issued to the marshal of the district of West Tennessee, June 3, 1835.

ALFRED BALCH,
Agent for the United States in the premises.

The five foregoing executions of *fieri facias*, as appears from the execution docket, were regularly returned and renewed down to the twelfth day of May, one thousand eight hundred and thirty-five, on which day five several executions of *capias ad satisfaciendum* were issued on said judgments against the said defendants, Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, returnable to August term, 1835, of said district court.

The following are copies of said *ca. sa.s* with the proceedings endorsed thereon, viz:

DISTRIT OF GEORGIA, *District Court*, } *Ca. sa.*

The President of the United States to the marshal of said district and to all and singular to the marshals of the several districts of the United States, greeting:

You are hereby commanded to take the bodies of Joshua E. White, Steele White, Barna McKinne, and Gabriel W. Denton, and them safely keep, so as to have them before the district court of said district, on the second Tuesday of August next, to satisfy the United States in the sum of eighteen thousand eight hundred and seventy-six dollars, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court recovered against them; as also nineteen dollars and forty cents, which to the said United States were adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, and Barna and Gabriel W. are convicted, as appears of record. And have you then and there this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this twelfth day of May, one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.
GEORGE GLEN, *Clerk.*

Indorsed thereon: 2.

Georgia District Court, August term, 1835.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt cond	$5,189 20
Interest, October 13, 1818.	
Cond	1,334 10
Interest, December 8, 1818.	
Cond	2,914 70
Interest, December 3, 1818.	
Costs	19 40
10 *fi. fa.s*	26 87
Ven. ex	2 68
Ca. sa.	2 68

Proceed. No delay.

ROBERT M. CHARLTON,
District Attorney.

By a statement of Alfred Balch, agent for the United States in the premises, and dated June 3, 1835, credit is to be given on this execution for all costs, exclusive of this *ca. sa.* See return and statement accompanying *venditioni exponas* No. 4, returnable to November term, 1827, and filed.

ROBERT M. CHARLTON,
District Attorney.

Settled by William W. Mann, agent of the United States in the premises, under a letter from the Solicitor of the United States treasury, dated May 27, 1835, who received a note payable twelve months after date, at Augusta, Georgia, made by Gabriel W. Denton, H. W. and S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for $32,796 30, being the aggregate amount, principal, and interest due this day on this and four other writs of *ca. sa.* in the suits of the United States *vs.* Joshua E. White and others, upon the receipt of which the defendant Gabriel W. Denton was discharged from custody, by order of said agent, July 24, 1835.

Debt, principal	$5,189 20
Debt, principal	1,334 10
Debt, principal	2,914 70
	9,438 00
Interest to 24th July, 1835	9,465 63¾
	18,903 63¾
Costs of *ca. sa.*	2 68
	18,906 31

Fees paid, $299 92.

JOHN W. LIVINGSTON,
Marshal for Northern District of New York.

DISTRICT OF GEORGIA, *District Court,* } *Ca. sa.*

The President of the United States to the marshal of the said district, greeting, and to all and singular the marshals of the several districts of the United States:

You are hereby commanded to take the bodies of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, and them safely keep so as to have them before the district court of said district on the second Tuesday of August next, to satisfy the United States in the sum of ten thousand three hundred and seventy-eight dollars and thirty-eight cents, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court recovered against them; as also, twenty-one dollars and forty cents which to the said United States were adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you then and there this writ. Witness the honorable Jeremiah Cuyler, judge of said court, this twelfth day of May, one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon.

5.

Georgia District Court, August term, 1835.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Ca. sa.

Debt cond.	$5,189 19
Interest, 13th August, 1818.	
Costs	21 40
Ten *fi. fa.s*	26 80
Vend. expo	2 68
Ca. sa	2 68

Proceed. No delay.

ROB'T M. CHARLTON,
District Attorney.

Indorsed on *fi. fa.:*

Received on this judgment, in part, 16th August, 1821, from the assignees of Stebbins & Mason, eleven hundred and fifty-four dollars and eighty cents, and on sundry other times two thousand six hundred dollars.

R. W. H., *Dis. Att'y.*

$3,754.

By a statement of Alfred Balch, agent for the United States in the premises, and dated June 3, 1835, a further credit is to be given on this execution for one thousand four hundred and eighty-two dollars and sixty-five and a half cents, being the net amount received by him as agent of the United States on sale of land as per return accompanying the *venditioni exponas* No. 4, returnable to November term, 1827, and filed, and all costs exclusive of this *ca. sa.*, said credit to be given on 22d September, 1827.

ROBERT M. CHARLTON,
District Attorney.

Settled by William W. Mann, agent of the United States in the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1835, who received a note payable three months after date to William W. Mann or order, made by Gabriel W. Denton, H. W. & S. Hills, C. Adams, jr., G. W. Huntington and John Barstow, dated July 24, 1835, for thirty-two thousand seven hundred and ninety-six dollars and thirty-nine cents, being the aggregate amount of principal and interest due this day on this and four other writs of *ca. sa.*, in the suit of the United States *vs.* Joshua E. White and others, upon receipt of which the defendant Gabriel W. Denton was discharged from custody, by order of said agent, July 24, 1835.

JOHN W. LIVINGSTON,
Marshal for Northern District of New York.

Fees paid, $89 54.

Debt, principal	$1,402	45
Interest	659	76
	2,062	21
Costs of *ca. sa.*	2	68
	2,064	89

DISTRICT OF GEORGIA, *District Court.* } *Ca. sa.*

The President of the United States to the marshal of the said district, greeting, and to all and singular the marshals of the several districts of the United States, greeting:

You are hereby commanded to take the bodies of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, and them safely keep so as to have them before the district court of said district on the second Tuesday of August next, to satisfy the United States in the sum of two thousand six hundred and sixty-eight dollars and eighteen cents, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court recovered against them; as also, twenty-one dollars and forty cents, which to the said United States were adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W. are convicted, as appears of record; and have you then and there this writ.

Witness the honorable Jeremiah Cuyler, judge of said court, this twelfth day of May, one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon.

3.

Georgia District Court, August term, 1835.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, BARNA MCKINNE, JANE JACKSON, and GABRIEL W. DENTON.

Ca. sa.

Debt cond	$1,334 09
Interest from 3d October, 1818.	
Costs	21 50
Ten *fi. fa.s*	26 80
One *vend. exp.*	2 68
Ca. sa	2 68

Proceed. No delay.

ROB'T M. CHARLTON,
District Attorney.

By a statement of Alfred Balch, agent of the United States in the premises, and dated June 3, 1835, a credit is to be given on this execution for all costs exclusive of this *ca. sa.* See return and statement accompanying *venditioni exponas* No. 4, returnable to November term, 1827, and filed.

ROB'T M. CHARLTON,
District Attorney.

Settled by William W. Mann, agent of the United States in the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1835, who received a note payable twelve months after date, at Augusta, Georgia, made by Gabriel W. Denton, H. W. & S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for thirty-two thousand seven hundred and ninety-six dollars and thirty cents, being the aggregate amount of principal and interest due this day on this and four other writs of *ca. sa.* in the suits of the United States *vs.* Joshua E. White and others, upon receipt of which the defendant Gabriel W. Denton was discharged from custody, by order of said agent, July 24, 1835.

JOHN W. LIVINGSTON,
Marshal for Northern District of New York.

Fees paid, $97 27.

Debt, principal	$1,334 09
Interest	1,345 27
	2,679 36
Costs for *ca. sa.*	2 68
	2,682 04

DISTRICT OF GEORGIA, *ca. sa.*

The President of the United States to all and singular the marshals of the several districts of the United States, greeting:

You are hereby commanded, as before, to take the bodies of Joshua E. White, Steele White, Jane Jackson, Barna McKinne and Gabriel W. Denton, and them safely keep, so as to have them before the district court of the United States for the district of Georgia, on the second Tuesday of August next, to satisfy the United States in the sum of five thousand eight hundred and twenty-nine dollars and forty-two cents, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court, recovered against them, as also twenty-one dollars and forty cents which, to the said United States, was adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W., are convicted, as appears to us of record; and have you then and there this writ. Witness the honorable Jeremiah Cuyler, judge of the said district court, this twelfth day of May, in the year one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

1.

District Court of the United States, District of Georgia, August term, 1835.

THE UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt condition	$2,914 71
Interest, October 3, 1818.	
Costs	21 40
18 *fi. fa's*	48 24
2 *ca. sa's*	5 36

Proceed.

ROBERT M. CHARLTON
District Attorney.

Also indorsed on foregoing *ca. sa.*, to wit:

Settled by William W. Mann, agent of the United States in the the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1855, who received a note payable at twelve months after date, to William W. Mann, or order, made by Gabriel W. Denton, H. W. & S. Hibbs, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for $32,796 30, being the

aggregate amount of principal and interest due this day on this and four other writs of *ca. sa.* in the suits of the United States *vs.* Joshua E. White and others, upon receipt of which the defendant, Gabriel W. Denton, was discharged from custody by order of said agent, July 24, 1835

JOHN W. LIVINGSTON,
Marshal Northern District of New York.

Fees paid, $137 82.

Debt, principal		$2,914 71
Interest		2,939 64
		5,854 35
Costs		75 00
		5,929 35

DISTRICT OF GEORGIA, *District Court,* } *ca. sa.*

The President of the United States to the marshal of the said district, and to all and singular the marshals of the several districts of the United States of America, greeting:

You are hereby commanded to take the bodies of Joshua E. White, Steele White, Jane Jackson, Barna McKinne, and Gabriel W. Denton, and them safely keep, so as to have them before the district court of said district, on the second Tuesday of August next, to satisfy the United States in the sum of three thousand two hundred and seventy-seven dollars and eighty cents, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court, recovered against them, as also twenty-one dollars and forty cents which, to the said United States, were adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W., are convicted, as appears of record; and have you then and there this writ. Witness the honorable Jeremiah Cuyler, judge of said court, this twelfth day of May, one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.

[L. S.] GEORGE GLEN, *Clerk.*

Indorsed thereon:

4.

Georgia District Court, August term, 1835.

UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt cond	$1,638 90
Interest, September 15, 1818.	

Costs	$21 40
9 *fi. fa's*	$21 44
Vend. exp	2 68
Ca. sa	2 68

No delay. Proceed.

ROBERT M. CHARLTON,
District Attorney.

Settled by William W. Mann, agent of the United States in the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1835, who received a note payable twelve months after date, to William W. Mann, made by Gabriel W. Denton, H. W. & S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for $32,796 30, being the aggregate amount of principal and interest due this day on this and four other writs of *ca. sa.* in the suits of the United States *vs.* Joshua E. White and others, upon receipt of which the defendant, Gabriel W. Denton, was discharged from custody by order of said agent July 24, 1835.

JOHN W. LIVINGSTON,
Marshal for Nothern District of New York.

Fees paid $103 94.

Debt, principal	$1,638 90
Interest	1,657 84
	3,296 74
Cost of *ca. sa*	2 68
	3,299 42

By a statement of Alfred Balsh, agent for the United States, in the premises, and dated June 3, 1835, credit is to be given on this execution for all costs *exclusive* of this *ca. sa.* See return and statement accompanying *venditioni exponas*, No. 4, returnable by November term, 1827, and filed.

ROBERT M. CHARLTON,
District Attorney.

UNITED STATES OF AMERICA, } *ss:*
Southern District of Georgia, }

I, Charles S. Henry, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the preceding and annexed seventeen half sheets of paper writing, contains a true and correct transcript of the record and proceedings had in the causes therein stated, so far as the same can now be formed and made by me, with the exception of all those executions of *fieri facias* of the same character with those above stated and transcribed, which have been issued on the said judgments in the said causes therein specified, and upon which there appears to have been made no return by the marshal, or a return of "no property to be found," or a return "defendant's insolvent," taken from and by me carefully compared with the originals now of file and of record in my office.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be hereunto affixed this twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] CHARLES S. HENRY,
Clerk District Court U. S., Southern District of Georgia.

UNITED STATES OF AMERICA, } ss:
Southern District of Georgia, }

I, John C. Nicoll, judge of the district court of the United States in and for the southern district of Georgia, do hereby certify that Charles S. Henry, who signed the foregoing certificate, is and was, at the time of the signing of the same, the clerk of the district court of the United States for the southern district of Georgia, and that full faith and credit ought to be given to his acts and attestations as such; that the seal attached to his said certificate is the seal of said court, and that his said certificate and attestation of the foregoing transcript is in due form.

In witness whereof, I have hereunto set my hand this twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-nine.

JOHN C. NICOLL,
District Judge for Georgia.

VI.

Report of Solicitor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
August 31, 1859.

SIR: The Secretary of the Treasury has referred to this office your letter of the 5th of July last, enclosing an order from the honorable Court of Claims, bearing that date, requesting him to furnish to said court, to be used as evidence in a suit of Charles J. Jenkins, assignee of John McKinne, against the United States, "copies of letter to District Attorney R. W. Habersham, dated March 24, 1820, directing, if the sureties assent in writing, he might grant certain indulgence on the bonds to the United States of Joshua E. White *et al.*"

"Also Mr. Habersham's letter of August 1, 1842, stating he would never have given time to the principal debtor without consent of sureties; and copies of any letters, if such exist, on the question whether any such indulgence was ever given, and whether, if given, what, if any, was the consideration on which such indulgence was granted."

In compliance with this request, I have the honor to enclose you a copy of a letter from Joseph Anderson, Comptroller of the Treasury, to Richard W. Habersham, esq., district attorney, Savannah, Georgia, dated March 24, 1820, authorizing him, if the debt due the United States from J. E. White & Co. be secured to his satisfaction, and the

sureties give their assent in writing to the indulgence, to stay further proceedings on their bonds for the present.

I have caused the files of the office to be carefully examined for the letter of "R. W. Habersham, dated August 1, 1842, stating he never would have given time to principal without the assent of the sureties;" but no such letter can be found.

In the search for any other letters relating to the indulgence referred to, I found that one had been written to this office on the 12th of January, 1836, by the Hon. Elisha Whittlesey, chairman of Committee of Claims, of the House of Representatives, enclosing the petition of Gabriel W. Denton, and requesting, for the information of said committee, the correspondence relating to the indulgence granted to J. E. White & Co.; and I enclose you a copy of the answer of V. Maxcy, esq., then Solicitor, dated January 13, 1836, enclosing copies of two letters from the Comptroller of the Treasury on this subject—one addressed to William Davies, esq., district attorney of Georgia, dated August 26, 1818; the other addressed to A. S. Bulloch, esq., collector, Savannah, Georgia, and dated May 12, 1819; copies of which I also enclose herewith for the use of the court. This letter of Mr. Maxcy seems to have furnished all the information which could then be obtained; but I find, from a further examination of the records of the Comptroller's office, that another application was made for indulgence in this case, which was answered by the Comptroller in a letter to A. S. Bulloch, collector, Savannah, Georgia, dated July 12, 1820, a copy of which I also enclose for the information of the court.

In regard to "the consideration on which the indulgence was granted," I have to say, after diligent search, that no evidence can be found that any consideration whatever was received by the government for the indulgence authorized.

Very respectfully, your obedient servant,

JUNIUS HILLYER, *Solicitor.*

E. M. GARNETT, Esq.,
Assistant Clerk Court of Claims, Washington.

VII.

Report from the treasury.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *September* 5, 1859.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed are true copies from the records of this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[L. S.]

P. CLAYTON,
Acting Secretary of the Treasury.

The Comptroller to W. Davies, district attorney.

TREASURY DEPARTMENT,
Comptroller's Office, August 26, 1818.

SIR: I enclose you a copy of a letter from Messrs. J. E. White & Co. to the Secretary of the Treasury, the subject-matter of which properly belongs to my department. This letter was referred to me by the chief clerk of the Secretary's office, being, as I presume, received since Mr. Crawford left the city for Georgia, though the letter is dated the 20th of May.

The letter does not contain such a representation of the state of the bonds as to enable me to give you special instructions respecting them. The concern conclude their letter, as you will observe, by requesting that indulgence in the payment of the bonds may be granted for a limited time—say for six months after the maturity of each bond—further applications having been made from your district for indulgence in the payment of custom-house bonds. It may be proper to state somewhat in detail the terms alone upon which indulgence in the payment of these kind of bonds has been granted by this department upon each bond as it may become due. Suit must be instituted, and a judgment be confessed by the principal and sureties, the latter given from under their hand and entered upon the record, that the indulgence thus granted to the principal is with their approbation and consent; and if, in your opinion and the opinion of the collector, the debt is not considered secure to the United States, additional security must be given. Upon these conditions being complied with by Messrs. J. E. White & Co., you are authorized to grant the indulgence of six months upon each bond after it shall have become due. Be pleased to advise me of what may be done in the business. I shall write Mr. J. E. White & Co. by this mail, and refer them to you for further information.

With, &c.,

J. ANDERSON.

WILLIAM DAVIES, Esq.,
District Attorney of the United States, Georgia.

The Comptroller to A. S. Bulloch, collector.

TREASURY DEPARTMENT,
Comptroller's Office, May 12, 1819.

SIR: The Secretary of the Treasury has referred to me an application of Messrs. J. E. White & Co., for an extension in the time for payment of their duty bonds due, and becoming due, to the amount of $20,000.

The time of indulgence asked for is one, two, and three years, from the periods respectively at which the several bonds become due.

I should feel a pleasure in granting that time, but it is longer than what has latterly been allowed in any case.

If the principal and sureties will confess judgment to be entered upon record, and the sureties give their assent in writing for the extension of the time for payment, and that they will not take any advantage in such indulgence, and the debt being secured to your entire satisfaction, you may allow till the 1st June, 1820, for the payment of one-half, and the 1st June, 1821, for the other half.

With, &c.,

JOSEPH ANDERSON.

A. S. BULLOCH, Esq.,
Collector, Savannah, Georgia.

The Comptroller to R. W. Habersham, district attorney.

TREASURY DEPARTMENT,
Comptroller's Office, March 24, 1820.

SIR: The Secretary of the Treasury has referred to me a communication addressed to him by Mr. J. E. White, (of the house of J. E. White & Co.,) who represents that in consequence of heavy losses sustained by the firm, in the late distressing fire at Savannah, it became absolutely necessary in order to prevent a sacrifice of property, that the indulgence heretofore granted should be extended.

If the debt be secured to your satisfaction and the sureties give their assent in writing to the indulgence, you may stay further proceedings on their bonds for the present.

When Congress shall have decided on the petition of the sufferers by fire at Savannah, you will be further instructed as to the course to be pursued in relation to the duty bonds of J. E. White & Co.

Be pleased to acquaint them with this arrangement.

With, &c.,

J. ANDERSON.

RICHARD W. HABERSHAM, Esq.,
District Attorney, Savannah, Georgia.

The Comptroller to A. S. Bulloch, collector.

TREASURY DEPARTMENT,
Comptroller's Office, July 12, 1820.

SIR: The Secretary of the Treasury has referred to me an application made to him by Mr. J. E. White and S. White, for further

indulgence on their duty bonds, who state, among other things, that the debt is amply secured.

This statement is corroborated by yourself, the district judge, district attorney for the United States, the marshal and others. Taking into consideration the distressing events which have occurred at Savannah, the Secretary of the Treasury has expressed himself in favor of exempting the cases of indulgence to the merchants in that place from the limitation which has been for some time prescribed by this department in cases of this kind generally, in which views I cordially concur.

You may therefore allow Messrs. J. E. & S. White, one, two, and three years, the sureties giving their assent in writing to such extension in the time for payment, and all the obligers confessing judgment to be entered of record if judgment has not already been obtained.

Respectfully, &c.,

JOSEPH ANDERSON.

A. S. BULLOCH, Esq.,
Collector, Savannah, Georgia.

VIII.

The Solicitor to Hon. E. Whittlesey.

OFFICE OF THE SOLICITOR OF THE TREASURY,
January 13, 1836.

SIR: Your letter of yesterday's date, accompanied by the petition of G. W. Denton, and the papers therein referred to, has been received. And in compliance with your request, I have the honor to enclose you herewith copies of two letters from the Comptroller, who then had charge of suits, dated August 26, 1818, and March 12, 1819, granting indulgence on the duty bonds of J. E. White & Co. These were obtained this morning from the Comptroller, from whom I learn that the letters requesting these indulgences are not to be found, and were doubtless destroyed in the conflagration of the Treasury building in March, 1833.

The files of my office furnish no additional information on the subject.

I return the papers received from you, and have the honor, &c.,

V. MAXCY, *Solicitor.*

Hon. E. WHITTLESEY,
House of Representatives, Congress United States.

TREASURY DEPARTMENT,
Solicitor's Office, August 31, 1859.

In pursuance of the 3d section of the act of Congress, approved February 22, 1849, I hereby certify that the foregoing is a true copy

from the letter books of this office of a letter addressed by V. Maxcy, Solicitor, to Hon. E. Whittlesey, on the 13th January, 1836.

In witness whereof, I have hereunto set my hand and caused the [L. S.] seal of the Solicitor's office to be affixed, the day and year first above written.

JUNIUS HILLYER,
Solicitor of the Treasury.

IX.

The Solicitor to the Secretary of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY.
June 18, 1836.

SIR: The letter of the Hon. C. E. Haynes to you of the 16th inst., requesting information respecting the conditions upon which Colonel John McKinne was engaged by the Treasury Department to prosecute the claims of the general government against Gab'l W. Denton, referred by you to this office for a report, has been received.

In reply, I have the honor to enclose you herewith a copy of my report to you of the 4th September, 1834, with a copy of my letter to Mr. Taney of the 13th November, 1833, therein referred to, showing the condition of the debt in question, and the terms upon which Colonel McKinne proposed to undertake its collection. I also enclose a copy of your letter to me of the 8th September, 1834, authorizing the acceptance of the proposition of Colonel McKinne with a modification, and also a copy of my letter to Colonel McKinne advising him of the same, dated 14th September, 1834.

These letters furnish the information requested by Mr. Haynes.

I have the honor to be, with great respect, sir, your most obedient servant.

V. MAXCY,
Solicitor of the Treasury.

Hon. L. WOODBURY,
Secretary of the Treasury.

X.

The Solicitor to the Secretary of the Treasury.

A.

[Exhibit to No. 9.]

OFFICE OF THE SECRETARY OF THE TREASURY,
November 13, 1833.

SIR: In the year 1817 sundry bonds for duties were executed at the custom-house Savannah, Georgia, by Joshua E. White & Co., as

principals, and Barna McKinne & Co., &c., as sureties, amounting in the aggregate to $20,514 89, all which became due in the year 1818.

In August, 1818, shortly before these bonds became due, application was made to the Comptroller of the Treasury for indulgence. In compliance with this request, the time of payment on each bond was extended six months, upon condition that judgments were confessed by the parties, and the debts rendered secure.* On the 12th May, 1819, a further indulgence was granted for one-half the debt to 1st June, 1820, and the other half to 1st June, 1821.

At the expiration of this indulgence, the bonds remained unpaid, executions were issued on the judgments and delivered to the marshal. In 1822 he returned that there had been paid at sundry times on these bonds $3,654. This sum was paid to the collector July 6, 1822. In 1823 the marshal returned no more property found; and this return has been repeated every year on some executions on these judgments to 1832.

In 1827 information was communicated to the Treasury Department that J. E. White had claims to land in Tennessee, and executions were forwarded to the marshal of the western district of Tennesses, and Alfred Balch, esq., was appointed special agent to superintend their sale. From the report of Mr. Balch it appears that the land had been previously mortgaged by White to other creditors; and that, by agreement, it was sold upon a credit of 1, 2, and 3 years, for $3,533 60, which, after deducting expenses, is to be divided equally between the United States and the assignee of the other claimants.

In 1831 the present district attorney of Georgia made $756 97, on account of these judgments, from Jane L. Jackson, and, in his letter advising the Solicitor of the same, states that "the judgments remain unsatisfied, and that all the defendants are dead but Jane L. Jackson, and that she is insolvent."

No report has been received from the attorney or marshal authorizing the expectation that anything further can be collected on these judgments.

Colonel John McKinne, of Augusta, Georgia, has made an offer of his assistance in collecting the judgments in question on the following terms, viz: that he shall be allowed "to receive twenty-five per cent. on the amount collected, and to ask nothing for his services if he does not collect at least $8,000; provided the government will allow him to compromise the claims for $8,000, or any sum beyond that amount which he can obtain, and order such of the district attorneys as he may call on, and the Attorney General, to give him such advice and legal assistance as he may require."

Considering this debt hopeless, without the aid of some person who has more information respecting the means of collecting it than are possessed by the officers of the government, I should think it expedient to accept of Colonel McKinne's offer of aid, so far as you

*And upon the further condition, that the written consent of the sureties should be filed with the district attorney to the indulgence; and that they would take no advantage of it. It was the duty of the district attorney, Mr. Habersham, to see that this condition was complied with.

have power to authorize it. An authority to compromise, which is not possessed by the department, cannot of course be conferred by it on Colonel McKinne.

Instructions might be given, however, to the district attorney to aid him in the United States courts below, and the Attorney General will, as a matter of course, attend to any proceedings that may be carried up to the Supreme Court. If he will be satisfied with this condition, I think the best chance the government will have, and the only chance, of collecting any considerable portion of the large balance due from White, will be to allow Colonel McKinne to receive twenty-five per cent. of the net amount recovered by his assistance.

Having no power to accept this proposition myself, I respectfully ask instruction, and have the honor to be, with great respect, sir, your most obedient servant.

V. MAXCY,
Solicitor of the Treasury.

Hon. R. B. TANEY,
Secretary of the Treasury.

XI.

The Solcitor to the Secretary of the Treasury.

B.

[Exhibit to No. 9.]

OFFICE OF THE SOLICITOR OF THE TREASURY,
September 4, 1834.

SIR: I have received the letter of John McKinne addressed to yourself, respecting the claim of the United States against John E. White & Co., and referred to this office for a report. Mr. McKinne has heretofore, on several occasions, made a similar proposition to the one contained in the letter to you, which was referred to the Secretary of the Treasury for instructions, which, however, have never been received. I have the honor to send herewith enclosed a copy of my last letter on this subject, as giving a more full view of it than any other, and containing my opinion as to the proper course to be pursued, which I respectfully request may be received as my report upon Mr. McKinne's letter referred to me, and to ask instructions.

I have, &c.,

V. MAXCY,
Solicitor of the Treasury.

Hon. LEVI WOODBURY,
Secretary of the Treasury.

NOTE.—The letter above referred to, which was enclosed in this to the Secretary, was a letter to Mr. Taney, dated 13th November, 1833, of which a copy is herewith sent.

XII.

TWENTY-SEVENTH CONGRESS, THIRD SESSION.

IN SENATE OF THE UNITED STATES, *January* 6, 1843.

Mr. BERRIEN submitted the following report:

The Judiciary Committee, to whom was referred the petition of Charles J. Jenkins and William W. Mann, asked leave to submit the following report:

The petitioners are the assignees of John McKinne, under the act of the State of Georgia, for the relief of insolvent debtors. John McKinne's claim against the United States arises as follows: The United States had recovered several judgments against Joshua E. White & Company, on custom-house bonds, and against Barna McKinne and Gabriel W. Denton, copartners under the firm of B. McKinne & Company, as their sureties. Only a small amount was paid on these judgments, and the parties shortly after became, or were for many years reported to be, and most of them now are, actually insolvent.

Gabriel W. Denton had possessed himself of a considerable amount of property belonging to Barna McKinne, individually, and had removed with it to Louisiana. John McKinne, aware of this, proposed to the Treasury Department to engage in the collection of the judgments against J. E. White & Co., and their sureties, on receiving an adequate allowance for his services out of the amount collected. His proposal was accepted, and the Secretary of the Treasury agreed to allow him twenty-five per cent. on the amount collected or secured on the said judgments, or any of them. After entering into this contract, and before proceeding to encounter the expense to which the execution of it would subject him, John McKinne addressed a letter to the Solicitor of the Treasury, inquiring if certain parties to the judgments, and particularly G. W. Denton, were still bound by them, as, if they were not, he would decline any further agency in the matter, and was informed by the Solicitor that, on inquiry at the treasury, his information was, that no release had been granted to either of the parties mentioned in his letter.

It appears that John McKinne thereupon entered upon his agency, proceeded to cause the aforementioned judgments to be revived, and by himself or his agent, went to the States of Tennessee, Kentucky, and New York, to obtain information and take measures for the recovery of the said judgments; that by his exertions and those of his agent, G. W. Denton was taken in execution on the said judgments, and thereupon gave a promissory note, with sureties (whose capacity to pay the amount is sufficiently proved) for the sum of $32,796 30. The original of that note is exhibited by the petitioners. It bears date July 24, 1835, is payable twelve months after date, with six per cent. interest from the date, and is signed by G. W. Denton and four

other persons, whose competency to pay the same is certified to the Secretary of the Treasury by the deputy collector of New York. The said note was, however, subject to a condition, by which the said G. W. Denton was to be discharged from the payment of the whole or any part of the said note, if released by Congress or any competent authority.

It further appears that the said G. W. Denton did petition Congress to relieve him from the payment of the said note, in the year 1836; that his petition was first presented in the House of Representatives, subsequently withdrawn and presented to the Senate, and that an act for his relief, and discharging him from the payment of the said note, was passed in that year, and that the ground on which relief was granted was, that he was discharged from liability to the payment of the said judgments, because indulgence had been granted by the United States to the principals, without the assent of the sureties. It appears that John McKinne gave notice of his claim during the pendency of G. W. Denton's petition, and resisted it on the ground of the claim which he had acquired, by virtue of his contract with the government, as well as by a denial of the facts which it alleged.

Upon this state of facts the committee think that the present petitioners are entitled to relief. Their assignee, John McKinne, had, in terms of a specific and valid contract with the government, and relying on the assurance by its officer of the continuing liability of G. W. Denton, at much labor and expense secured to the government a considerable amount. It was at the option of the United States to have collected this money, since the testimony shows that the makers of the note were abundantly able to pay it. They released it with full notice of J. McKinne's claim, and, as the committee think, under a misapprehension of the fact, that indulgence had been granted to the principals in the custom-house bonds, without the assent of G. W. Denton, the surety. In looking into the papers filed with G. W. Denton's petition, the committee find a copy of a letter from the Comptroller of the Treasury, to R. W. Habersham, district attorney, in which, referring to these judgments, he says: "If the debt be secured to your satisfaction and the sureties give their assent in writing to the indulgence, you may stay further proceedings on their bonds for the present." This letter is dated 24th March, 1820, and Mr. Habersham, in a letter dated 1st August, 1842, says: "I, as district attorney, would never have given time to the principal debtor, without the written consent of the securities."

But however this may be, the committee are of opinion that the claim of the petitioners cannot be affected by the discharge of G. W. Denton. On the assurance, by the Solicitor of the Treasury, that G. W. Denton had not been released from his liability on these judgments, John McKinne entered into this contract on the faith of, and in execution of which he encountered both labor and expense. He placed at the disposal of the government a large amount of money, the obligations to pay which they released on the ground that by the indulgence which they, the government, before their contract with J. McKinne, had granted to the principals in these judgments, the sureties were released. If this was so, then surely the United States

violated their contract, for it was a part, and an essential part of that contract, expressly stipulated by their own officer, that none of the parties to the judgments had been released. In this view, the committee think that the discharge of G. W. Denton, on the ground of his legal or equitable release from liability, resulting from the act of the government, cannot release the United States from liability on their contract with John McKinne. The United States stipulated with him that G. W. Denton had not been released, and agreed to employ him as their agent in the collection of the judgments, with a promise to pay him twenty-five per cent. on whatever amount he should collect or secure. He did secure $32,796 30, by an undoubted note which he placed at their disposal, and they cancelled this note and discharged the maker on the ground that, prior to their contract with J. McKinne, and in violation of its express stipulations, they had already released G. W. Denton. The committee think that this was a misapprehension on the part of Congress; that G. W. Denton had no legal or equitable claim to release, and that this is obvious from the testimony to which they have referred. But, apart from this, as John McKinne, in fulfilment of his contract, placed this money at their disposal, and thereby, in terms of that contract entitled himself to a stipulated portion of it, the government could not deprive him, on any principle of equity or justice, of the right which he had thus acquired, by their own improvident, or even rightful release of G. W. Denton, and the more especially as J. McKinne gave notice of his claim, and resisted, and, as it now appears, justly, the right of G. W. Denton to such release. The committee accordingly report a bill.

TWENTY-SEVENTH CONGRESS, THIRD SESSION.—S. 66.

IN SENATE OF THE UNITED STATES, *January* 6, 1843.

Mr. Berrien, from the Committee on the Judiciary, submitted a report, (No. 31,) accompanied by the following bill; which was read, and passed to a second reading.

A BILL for the relief of Charles J. Jenkins and William W. Mann, assignees of John McKinne.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed to pay to Charles J. Jenkins and William W. Mann, assignees of John McKinne, the sum of eight thousand one hundred and ninety-nine dollars and seven cents, out of any money in the treasury not otherwise appropriated.

Deposition of John McKinne.

STATE OF GEORGIA, *County of Richmond, ss:*

On this thirteenth day of April, A. D. 1859, personally came John McKinne, the witness within named, and, after having been first

sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of John McKinne, taken at the request of Charles J. Jenkins, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Charles J. Jenkins and William W. Mann, assignees in insolvency of John McKinne *vs.* The United States. The adverse party was notified, dil not attend, nor object.

BENJ. F. HALL, [L. S.]
Clerk of Superior Court and Commissioner.

STATE OF GEORGIA, *County of Richmond:*

CHARLES J. JENKINS and WILLIAM W. MANN, assignees in insolvency of John McKinne, *vs.* THE UNITED STATES.

Interrogatories propounded to John McKinne, a material witness for the claimants.

Interrogatory 1. Have you any interest in this suit? If yea, state the nature of that interest.

Interrogatory 2. Were you employed by the Secretary of the Treasury of the United States, in the year 1834, to collect certain judgments which had been recovered in the name of the United States against Joshua E. White & Co. as principals, and Barna McKinne & Co. as sureties? If yea, state the means you employed to effect that purpose; describe the character of the service that was performed, and the amount of money expended therein; and state, further, whether any part of said fund has been repaid by the government of the United States.

Interrogatory 3. Was the money due on said judgment secured to be paid, through your services, by Gabriel W. Denton, one of the parties to said judgment? If yea, state when the transaction occurred, and the circumstances attending it.

Interrogatory 4. What was the date of said judgment? If you have the means, annex a certified copy of the same.

Interrogatory 5. Was Congress notified at the time of the passage of the act for the relief of said Denton of the claim for compensation set up in this case?

Interrogatory 6. If you know anything else material in the investigation of this claim state the same, as though particularly interrogated.

Answers of John McKinne, esq.

Interrogatory 1. He answers: I have no other interest in the suit than arises from a desire that my creditors should receive what was justly due to me.

Interrogatory 2. He answers: I was employed by the Solicitor of the Treasury of the United States to collect judgments that were due to the government by Joshua E. White & Co. as principals, and Barna McKinne & Co. as securities. At my request the Solicitor of the Treasury directed the clerk of the district court of Georgia to issue writs of *ca. sa.* against Gabriel W. Denton, (one of the firm of Barna McKinne & Co.,) for the amount of said judgments, with instructions to all and singular the marshals of the United States to obey such instructions as I myself or sub-agent might give for the recovery of the judgments above mentioned. Under the authority thus given, (after expending a large sum of money for procuring exemplifications of said judgments, writs of *ca. sa.*, &c.,) William W. Mann was appointed sub-agent for the purpose of enforcing the *ca. sa's* against Denton. With these, and all other documents considered necessary by two of the most distinguished lawyers of the State, Mr. Mann proceeded, in pursuit of Denton, to Mississippi, New Orleans, up the river, and many other places, until at length he was found in the State of New York, where he was, by the direction of my sub-agent, arrested by a marshal of the United States, thereby rendering payment of the debt positively certain, the debtor being amply able to discharge it, had not Congress subsequently passed an act releasing Denton from the payment of the entire debt without regarding property in it which the Solicitor of the Treasury had vested in me. The expenses for procuring exemplifications, writs of *ca. sa.*, travelling expenses, &c., amounted, to the best of my recollection, to about seven hundred dollars, not one cent of which has ever been refunded.

Interrogatory 3. He answers: The entire amount due on said judgments was secured to be paid, as above stated, and had not Congress prevented, it certainly would have been done. The Solicitor of the Treasury gave me the most positive assurances that the judgments remained entirely unpaid; and that, after deducting from the amount recovered such expenses as I might incur in prosecuting the claim, I should be entitled to one-fourth part of the balance so recovered, otherwise I certainly should not have expended so much labor and money as I did on an uncertainty. I then thought, and yet think, that a contract entered into by an official agent of the government with a citizen is reciprocally binding on each. If, then, Congress had let the Solicitor's contract and mine alone, I should have recovered the whole debt, and certainly paid to the government its part thereof.

Interrogatory 4. He answers: I have not a copy of the judgments and know not their date.

Interrogatory 5. He answers: I have been informed, and believe, that Congress was informed of the existence of my interest in the judgments before the act for Denton's relief was passed.

DISTRICT OF GEORGIA, *ca. sa.*

The President of the United States to all and singular the marshals of the several districts of the United States, greeting:

You are hereby commanded, as before, to take the bodies of Joshua E. White, Steele White, Jane Jackson, Barna McKinne and Gabriel W. Denton, and them safely keep, so as to have them before the district court of the United States for the district of Georgia, on the second Tuesday of August next, to satisfy the United States in the sum of five thousand eight hundred and twenty-nine dollars and forty-two cents, which the United States lately, to wit, on the tenth day of August, eighteen hundred and nineteen, in the said court, recovered against them, as also twenty-one dollars and forty cents which, to the said United States, was adjudged for their costs and charges by them about their suit in this behalf expended, whereof the said Joshua E., Steele, Jane, Barna, and Gabriel W., are convicted, as appears to us of record; and have you then and there this writ. Witness the honorable Jeremiah Cuyler, judge of the said district court, this twelfth day of May, in the year one thousand eight hundred and thirty-five.

ROBERT M. CHARLTON,
District Attorney.

[L. S.] GEO. GLEN, *Clerk.*

Indorsed thereon:

1.

District Court of the United States, District of Georgia, August term, 1835.

THE UNITED STATES *vs.* JOSHUA E. WHITE, STEELE WHITE, JANE JACKSON, BARNA MCKINNE, and GABRIEL W. DENTON.

Debt condition	$2,914 71
Interest, October 3, 1818.	
Costs	21 40
18 *fi. fa's*	48 24
2 *ca. sa's*	5 36

Proceed.

ROBERT M. CHARLTON
District Attorney.

Also indorsed on foregoing *ca. sa.*, to wit:

Settled by William W. Mann, agent of the United States in the the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1855, who received a note payable at twelve months after date, to William W. Mann, or order, made by Gabriel W. Denton, H. W. & S. Hibbs, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for $32,796 30, being the

Interrogatory 3. Was the money due on said judgment secured to be paid through your services by Gabriel W. Denton, one of the parties to said judgment? If yea, state when the transaction occurred, and the circumstances attending it.

Interrogatory 4. What was the date of the rendition of said judgment? If you have the means, annex a certified copy of the same.

Interrogatory 5. Was Congress notified at the time of the passage of the act for the relief of said Denton of the claim for compensation set up in this case?

Interrogatory 6. If you know anything else material in the investigation of this claim, state the same as though particularly interrogated.

P. PHILLIPS,
Solicitor for Petitioner.

WASHINGTON, *February* 14, 1859.

Answers of William W. Mann to the interrogatories propounded to him.

Answer to first interrogatory. I have no interest whatever in this suit.

Answer to second interrogatory. I was never employed by the Secretary of the Treasury to collect any judgment of the United States against Joshua E. White & Co. as principals, and Barna McKinne & Co. as sureties.

Answer to third interrogatory. During the year 1834 Colonel John McKinne, of Augusta, Ga., was appointed, this deponent believes, by the Secretary of the Treasury of the United States, special agent for the collection of several judgment debts due to the United States by Joshua E. White & Co., for which debt Barna McKinne & Co. were also bound as securities. In the summer of 1835 this deponent was employed by the said John McKinne as his sub-agent for the same purpose. In the prosecution of his sub-agency this deponent went first to the State of Tennessee to get certain necessary information in the offices of the clerk and attorney; thence into the State of Kentucky to make other inquiries relative to his mission. From Kentucky this deponent proceeded to the State of New York for the purpose of arresting Gabriel W. Denton, (a member of the firm of Barna McKinne & Co.,) who was represented to be able to pay the debt. This deponent found Denton in the interior of the State of New York. He caused Denton to be arrested, by virtue of the *ca. sa.* issued on said judgments, and conducted to the city of New York. There this deponent, upon receiving from Denton a note, with satisfactory security for the full amount of the debt, consented to the discharge of Denton from custody. The note taken was of unquestionable character, and was intended to secure payment of the debt, and did secure payment of the debt, unless the United States, by their own act of grace, should remit the same. At the time of making said note, it was admitted by the parties to it that legal remedy was hopeless, and

that Denton's only recourse was upon the liberality of Congress. This deponent cannot recollect to have heard, nor does he believe that till after the execution of the note he did hear, of any claim or pretence on the part of Denton to have been discharged or released on account of time having been given to the principals without the consent of the securities. This deponent believed that, having taken said note, he had consummated for his principal, John McKinne, a right to all the benefits which, under his agreement with the United States, were to accrue to him if he secured the debt. And it was not conceived that his principal could be divested of that right by any subsequent act of remission on the part of the United States in favor of Denton; otherwise he would have refused to receive the note, and would have insisted (as he believes he might have done successfully) upon prompt payment in cash of the whole, or a considerable portion of the claim. But having been informed that it would be extremely inconvenient, if not impossible, to raise so large a sum on so short notice, and being not unwilling to favor Denton so far as he could do so without compromitting the interest of his principal, this deponent took the note and discharged Denton from custody, in full confidence that he was not thereby jeopardizing those interests. The note was drawn at long time, solely that Denton might have the opportunity of applying to Congress for relief, and avoid the inconvenient advancement of a large sum, from the payment of which he might eventually be absolved.

The travelling expenses of this deponent upon this mission for the arrest of Denton amounted to the sum of four hundred and six dollars and ten cents ($406 10.) Other incidental expenses, while absent, to the sum of one hundred and seven dollars and twenty-five cents, ($107 25,) and the fee or pay of deponent for his services as sub-agent, to the sum of six hundred dollars, ($600,) making the agregate expenses of the mission, so far as I am acquainted with them, to be one thousand one hundred and thirteen dollars and thirty-five cents, ($1,113 35,) all of which, except the said sum of six hundred dollars, the fee or pay of this deponent as sub-agent aforesaid, were paid by the said John McKinne at the time they were incurred. The said fee of six hundred dollars has never been paid, nor any part thereof. It is still due. But this deponent has no interest in it, having relinquished to one of his copartners his right to a portion, or one-third, of the same, which was originally due to him.

Answer to fourth interrogatory. This deponent does not know the date of the judgments, and has no means of annexing certified copies of the same.

Answer to fifth interrogatory. This deponent does not know.

Answer to sixth interrogatory. The amount of the note taken by this deponent in settlement of the said judgments was $32,796 30, dated July 24, 1835, and bearing interest from date. This was the sum of principal, interest, and costs calculated to be due on said judgments at that date. Two credits were indorsed upon the *fi. fa.'s*, and were allowed in the settlement: one for a payment of $3,754 80, dated August 16, 1821; the other for $1,482 65, dated September 22,

1827. These credits were allowed, and the note, with security, taken, as above stated, for the remainder due.

W. W. MANN.

Sworn to and subscribed before me this 25th day of May, 1859.

BENJAMIN F. HALL, [L. S.]
Clerk Superior Court and Commissioner.

Schedule of evidence for the United States.

Report of Committee of Claims, January 9, 1839, to whom was referred the petition of John McKinne, praying compensation for his services in securing certain debts due the United States. Reports of committees, 25th Congress, 3d session, House Report No. 129, vol. 1. H. R. Report, with Senate bill No. 247, for the relief Gabriel W. Denton, vol. 5 Senate Doc., 1st session 24th Congress, Doc. No. 361.

COURT OF CLAIMS.

ASSIGNEES OF MCKINNE *vs.* THE UNITED STATES.

Interrogatories to be propounded to W. W. Mann, Henry H. Cumming, and William T. Gould, witnesses to be examined on the part and behalf of claimants.

Interrogatory 1. What is your name, age, and occupation? Have you any interest in the event of the suit?

Interrogatory 2. Examine the record annexed, and state what, under the circumstances disclosed by it, particular reference being had to the evidence of Mann, would in your judgment be a fair compensation to McKinne for his services, on the principle of a *quantum meruit?*

Interrogatory 3. What would have been a fair compensation for said services, if the employment had been wholly conditional, in the first instance, adjusting the same on the principle of a *quantum meruit?*

Interrogatory 4. State if you know any circumstances which show the character of the services rendered to the government in the above case.

P. PHILLIPS,
Solicitor for Claimant.
DAN'L RATCLIFFE,
Assistant Solicitor of the Court of Claims.

COURT OF CLAIMS.

WILLIAM W. MANN and CHARLES J. JENKINS, assignees of John McKinne, *vs.* THE UNITED STATES.

Interrogatories to be propounded to William W. Mann, Henry H. Cumming, and William T. Gould, witnesses to be examined on the part and in behalf of claimant.

Interrogatory 1. What is your name, age, and occupation? Have you any interest in the event of the suit?

Interrogatory 2. Examine the record annexed, and state what, under the circumstances disclosed by it, particular reference being had to the evidence of Mann, would in your judgment be a fair compensation to McKinne for his services, on the principle of a *quantum meruit*.

Interrogatory 3. What would have been a fair compensation for said services if the employment had been wholly conditional in the first instance, adjusting the same on the principle of a *quantum meruit?*

Interrogatory 4. State if you know any circumstances which show the character of the services rendered to the government in the above case.

COURT OF CLAIMS.

ASSIGNEES OF MCKINNE *vs.* THE UNITED STATES.

Answers of William W. Mann to the foregoing interrogatories.

To 1st interrogatory he answers: My name is William W. Mann; I am fifty-one years of age; I am the editor of a weekly paper.

To 2d interrogatory he answers: In my judgment, a fair compensation to McKinne under the circumstances stated would be nine thousand five hundred dollars, ($9,500,) with interest from the 24th day of July, 1835.

To 3d interrogatory he answers: In my opinion, a fair compensation for McKinne's services would have been the refunding of all McKinne's expenses in the business, and the payment to him, at the date of the service rendered, of twenty-five (25) per cent. on the amount secured by him on the judgments with the collection of which he was charged.

W. W. MANN.

Sworn to and subscribed before me this 12th April, A. D. 1860.

BENJ. F. HALL, [L. S.]
Commissioner Court of Claims.

COURT OF CLAIMS.

ASSIGNEES OF MCKINNE *vs.* THE UNITED STATES.

Answers of Henry H. Cumming to foregoing interrogatories.

To 1st interrogatory he answers: My name is Henry H. Cumming; my age, sixty years; my profession, that of attorney and counsellor at law; I have no interest whatever in this suit.

To 2d interrogatory he answers: I have examined the record annexed to the interrogatories, and state that, in my judgment, under the circumstances therein disclosed, particular reference being had to the evidence of William W. Mann, esq., a fair compensation for the service of John McKinne in the case stated, if it had been paid at the time of the settlement with Denton, on the 24th June, 1835, would have been about nine thousand three hundred dollars, ($9,300;) and that, if this delay in the payment of such compensation is not properly imputable to John McKinne or those representing him, he or they would be entitled to interest thereon from the time when such payment ought to have been made down to the time of the actual payment.

To 3d interrogatory he answers: Supposing that in the employment of John McKinne his compensation had been "wholly conditional," by which I understand is meant, that, in case there was no collection, there should be no payment whatever, even of expenses incurred in a fruitless effort to collect, I think a prudent man would have expected, and might have reasonably demanded, a compensation larger than twenty-five (25) per cent. of the amount realized—how much larger would depend upon a variety of circumstances not so disclosed in the "record" as to enable me to judge.

To the 4th interrogatory he answers: I know no circumstances showing the character of the services rendered to the government in this case beyond what I learn from the printed documents annexed to the interrogatories.

HENRY H. CUMMING.

Sworn to and subscribed before me this 12th day of April, A. D. 1860.

BENJ. F. HALL, [L. S.]
Commissioner Court of Claims.

COURT OF CLAIMS.

ASSIGNEES OF MCKINNE *vs.* THE UNITED STATES.

Answers of William T. Gould to foregoing interrogatories.

To 1st interrogatory he answers: My name is William Tracy Gould; my age, sixty years; and by profession I am an attorney and counsellor at law; I have no interest whatever in this case.

To 2d interrogatory he answers: The services rendered by John McKinne, as set forth in the deposition of William W. Mann in the annexed printed record, were worth three thousand three hundred dollars, and all expenses paid, if a fixed and certain compensation had been agreed on in advance; I speak of their value at the time when rendered, if paid then; if to be paid now, they ought to be more than doubled.

To 3d interrogatory he answers: If the payment of the fee depended on success in collection, and the party employed was to pay his own expenses, the services were worth fifty per cent. of the whole amount secured; I would not have undertaken the business for less.

To 4th interrogatory he answers: I have no personal knowledge of the circumstances of this case.

WM. T. GOULD.

Sworn to and subscribed before me this 12th day of April, A. D. 1860.

BENJ. F. HALL, [L. S.]
Commissioner Court of Claims.

STATE OF GEORGIA, *Richmond County, ss:*

On this the twelfth day of April, A. D. eighteen hundred and sixty, personally came William W. Mann, Henry H. Cumming, and William T. Gould, the witnesses within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by the commissioner, and then proposed by him to the witnesses; and the answers thereto were written down by the commissioner in the presence of the witnesses. The depositions aforesaid, taken at the request of Charles J. Jenkins, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of William W. Mann and Charles J. Jenkins, assignees of John McKinne, *vs.* The United States. The adverse party notified did not attend, and did not object.

BENJ. F. HALL, [L. S.]
Commissioner.

Schedule of evidence for the United States.

Report of Committee of Claims, January 9, 1839, to whom was referred the petition of John McKinnie, praying compensation for his services in securing certain debts due the United States. Reports of committees, 25th Congress, 3d session, House Report No. 129, vol. 1. H. R. Report, with Senate bill No 247, for the relief of Gabriel W. Denton, vol. 5 Senate Doc., 1st session, 24th Congress, Doc. No. 361.

IN THE COURT OF CLAIMS.

April 30, 1860.

CHARLES J. JENKINS and WILLIAM W. MANN, assignees of John McKinne, *vs.* THE UNITED STATES.

HUGHES, J., delivered the opinion of the court.

This is a claim against the United States for damages accruing from the breach of a contract made by the Secretary of the Treasury with John McKinne, of Georgia, for the collection of certain judgments. The claimants, Jenkins and Mann, are the assignees of said McKinne, under the insolvent laws of Georgia, by virtue of an appointment regularly made.

The material facts are as follows:

Five several judgments were rendered in the United States district court for the district of Georgia in August, 1819, in favor of the United States and against Joshua E. White, Steele White, Barna McKinne, and G. W. Denton, Jane Jackson being also a defendant in four of the judgments. These judgments were founded on custom-house bonds, given by Joshua E. White, Steele White, and Jane Jackson, composing the firm of Joshua E. White & Co. as principals, and Barna McKinne and Gabriel W. Denton, composing the firm of B. McKinne & Co. as sureties.

Executions on these judgments were taken out and from time to time renewed and some collections made; but in November, 1833, the condition of the claims was such that further collections on them in the ordinary course were pronounced hopeless by the officers of the government.—(Printed record, p. 83.)

There was due the United States on these judgments, of principal, interest, and costs, on the 24th of July, 1835, the sum of $30,927 11.—(Record, p. 19.)

In September, 1834, the Secretary of the Treasury, at the solicitation of John McKinne, employed him to collect the money remaining due on the judgments for a contingent compensation of twenty-five per cent. on any amount realized not less than eight thousand dollars, but the Secretary expressly declined to authorize any compounding of the claims.—(Record, p. 24)

Gabriel W. Denton was the only one of the judgment debtors then alive and solvent. He, as before stated, had signed the custom-house bonds on which the judgments were founded as a surety only. John McKinne, entering upon his employment, substituted William W. Mann as an agent in his place to enforce the collection of the judgments. Mr. Mann sued out process against the person of Denton, caused his body to be taken in execution, and upon his giving a note, with sureties, payable to Mann twelve months after date, and dated July 14, 1835, for $32,796 30, caused him to be released from custody and the process to be returned with the indorsements hereafter given. *The note* is indorsed as follows:

"Pay to the order of John McKinne, without recourse to me.

"WM. W. MANN."

And also:

"Whereas Gabriel W. Denton (one of the makers of the within note) has satisfied in full five writs of *ca. sa.*, (and the judgments whereon said writs are founded,) returnable to the next August term of the United States court for the district of Georgia, wherein the United States are plaintiffs, and Joshua E. White & Co. and their securities (of whom the said Gabriel W. Denton is one) are defendants; and whereas the said Gabriel W., believing that he has been compelled, under peculiarly hard circumstances, justly entitling him to relief, to pay to the United States a large sum of money, designs applying to the Congress of the United States, or to some other competent authority, for relief: Now, I hereby agree, in relation to the within note, that if the said Gabriel W. Denton, or any other of the makers of the said note, shall, previous to or at the time the within note shall become due, exhibit to me a certificate under the hand and seal of the Secretary of the Treasury of the United States for the time being, or of the Solicitor of the Treasury of the United States for the time being, that relief in the premises has been granted to the said Gabriel W. by the authority competent to grant the same, and that a certain sum, naming it, has been remitted to the said Gabriel W. Denton by the United States, then that sum, whatever it may be, shall be deducted from the amount which may be due on the within note, and the makers shall be responsible to me for the balance only.

"W. W. MANN, *Payee.*

"NEW YORK, *July* 24, 1835."

The process on which Denton had been arrested was returned as follows:

"Settled by William W. Mann, agent of the United States in the premises, under a letter from the Solicitor of the United States Treasury, dated May 27, 1835, who received a note payable twelve months after date to William W. Mann, made by Gabriel W. Denton, H. W. and S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, dated July 24, 1835, for $32,796 30, being the aggregate amount of principal and interest due this day on this and four other writs of *ca. sa.* in the suits of The United States *vs.* Joshua E. White and others; upon receipt of which the defendant, Gabriel W. Denton, was discharged from custody by order of said agent, July 24, 1835.

"JOHN W. LEVINGSTON,

"*Marshal for Northern District of New York.*"

The above-mentioned promissory note was delivered to the Treasury Department by McKinne or his agent, and is now on file there. Before the note was due, Denton applied to Congress to be discharged from its payment. To this McKinne objected, on the ground that it would impair his right to twenty-five per cent. commission for collecting the claim. His claim and his objection were officially communicated to Congress by the committee to whom the subject was referred.—(See their report, Senate Docs., 1st sess. 24th Cong., vol. 5, p. 361.) But the committee, under the erroneous impression that Denton had

been equitably discharged by the government, through its want of diligence in enforcing its remedy against the principal debtor in the original custom-house bond, which he signed only as surety, reported in favor of his release, and Congress, acting upon that recommendation, discharged him by an act passed July 2, 1836, to the effect following:

"That Gabriel W. Denton and his sureties, namely, H. W. and S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, be, and they are hereby, acquitted and discharged of and from a certain joint and several promissory note executed by them to William W. Mann for the sum of thirty-two thousand seven hundred and six dollars and thirty-two cents; which said note bears date New York, July twenty-fifth, eighteen hundred and thirty-five, is payable twelve months after date, at the city of Augusta, in the State of Georgia, and was given in consideration of five several judgments, rendered in August, eighteen hundred and nineteen, by the district court of the United States for the district of Georgia in favor of the United States against Joshua E. White and others, of whom said Denton was one, and which said note, though made payable to William W. Mann, is really and in truth for the use and benefit of the United States: *Provided, however*, That nothing in this act contained shall be held to discharge the other parties against whom said judgments were rendered, or prevent the enforcement thereof against them, their heirs or representatives."—(6 U. S. L., 665.)

That this act of Congress was passed under a misapprehension of law and fact, is shown by the report of the committee made upon the petition of McKinne, afterwards presented to Congress.—(See Mr. Berrien's report, Record, p 85 *et seq.*) But whatever considerations prevailed in the passage of the act, its effect was to extinguish the claim of the United States against Denton upon the note taken by Mann.

Upon this state of facts the petitioners claim twenty-five yer cent. on the amount of the note, the full amount of the contingent fee promised McKinne in case of success; regarding the taking of the note, and its subsequent release by Congress, as equivalent to the collection by McKinne of so much money. The amount of compensation claimed is stated in the petition at $8,199 07, being one-fourth of the amount secured by the note. Interest is demanded on this sum from the 24th of July, 1835.—(Record, p. 7.)

McKinne having admitted in his petition to Congress that the note was subject to a credit of $2,569 45, by reason of collections made on the judgments, not taken into account when the note was given, thus reducing the amount of Denton's liability to $30,226 85, even according to the measure of damages insisted on by the petitioners, the twenty-five per cent. would only amount to $7,556 71¼, exclusive of interest and expenses.—(Record, p. 19.)

The claim of the petitioners to the relief they seek rests upon two affirmative propositions: 1st, that on the release of Denton by Congress the United States became liable to pay McKinne the full amount of commissions he was promised for the collection of the entire debt; 2d, that said release resulted solely from the action of the government, without the consent or fault of McKinne.

We are not prepared to admit that, *as between attorney and client*, where there is a contract for a contingent fee, the client becomes liable for the full amount of such fee when he revokes the authority of his attorney, compromises his suit, or discharges his debtor. Contingent fees are no favorites of the law, and it is contrary to its well-founded policy to give an attorney a vested right in litigation, so that his compensation may obstruct a compromise, or fall like a penalty upon his client, should he choose to buy his peace. The better opinion would seem to be, that an attorney accepting an employment for a part of the sum to be recovered, takes his engagement subject to the right of his employer to revoke his authority, compromise the suit, or discharge the debtor; and that, upon the termination of his contract by such means, he would be entitled to recover the reasonable value of his services up to the time of discharge, and no more. In other words, the measure of damages would be ascertained under a *quantum meruit*, and not by the terms of the contract. An application of this rule to the case before us would be extremely difficult, because of the unsatisfactory nature of the evidence offered to prove the value of McKinne's services. The depositions of William W. Mann, Henry H. Cumming, and William T. Gould are relied on by the petitioners for that purpose.

A perusal of the two former demonstrates that, instead of giving evidence upon the single question of the value of McKinne's services, without reference to any contract, they predicated their opinions upon the special circumstances of the case, as disclosed in the record, and embraced in their testimony conclusions, both of law and fact, founded thereon. The result of the matter is, that we are authorized to infer from their evidence that, were they sitting in judgment upon the case, they would award to the petitioners the contract price, or something more; but we are not able to declare what price either one of them would place upon the services of John McKinne, estimated at their intrinsic value unaffected by any contract.

Mr. Mann arrives at the conclusion that nine thousand five hundred dollars, with interest from the 24th day of July, 1835, would be a fair compensation. Mr. Cumming's estimate is nine thousand three hundred dollars, with interest from the 24th of July, 1835. Mr. Mann himself rendered most, if not all, of the services performed in the business, as the substitute of McKinne, yet he charged only six hundred dollars for the same, exclusive of expenses.

The evidence of Mr. Gould approximates somewhat towards an estimate of the value, but does not wholly exclude the contract from consideration; which, indeed, is the fault of the interrogatories put to all three of the witnesses.

Mr. Gould gives his opinion that the services, as set forth in a deposition referred to, were worth three thousand three hundred dollars, if a fixed and certain compensation had been agreed on in advance, if paid then; if paid now, more than double that sum.

Unless the evidence of Mr. Gould were adopted as a criterion, we should be unable, on the principle of a *quantum meruit*, upon the evidence before us, to assess the damages of the petitioners at any sum beyond the expenses incurred and Mann's fee of six hundred dollars, amounting in all to $1,713 35.

The inquiry as to the true rule of computing the damages may, however, be laid aside. It is not the controlling question in the case. A careful consideration of the facts has brought us to the conclusion that the petitioners are not in a position to claim that the fulfilment of McKinne's contract was prevented wholly by the default of the United States. McKinne's employment by the Secretary of the Treasury was of his own seeking. He came with an offer to "collect" a debt considered by the government uncollectable, and proposed his own terms.

He was possessed of such knowledge that he was willing to venture his labor and expenses in the business upon the issue of his undertaking, stipulating for such compensation, in case of success, as he deemed a fair equivalent, both for his services and the risk of losing them. It was a speculation projected entirely by him, and with a view, doubtless, to his own profit. The Secretary of the Treasury was passive in the origin of the matter. He accepted McKinne's proposition to collect eight thousand dollars and upwards for twenty-five per cent.; but expressly disclaimed any power and refused any authority to compound the debt. The inducement to the United States to enter into this contract was the certainty of a clear gain to the treasury before any charges could be claimed, by the collection of several thousand dollars otherwise deemed lost, and the creation of a fund out of which to pay McKinne his commissions. The distinctive and leading feature of this arrangement was *community of interest* between McKinne and the United States. It would have been difficult to have subjected their contract to any construction by which that feature could have been eliminated from it, and one of the parties made to succeed to its fullest benefits and the other to none, with a positive loss superadded to the amount of the former's gains.

Very clear proof of strict performance on the one part, and total dereliction on the other, ought to be required to deduce consequences from the operation of a contract so repugnant to its original design. How far did McKinne perform his engagement, and to what extent did he benefit the United States? The claim was a good one in the beginning; but the fact of Denton's ability to pay, and, perhaps, his residence, was unknown to the officers of the government. McKinne acted on his knowledge of these facts; he added nothing to the intrinsic validity of the claim. Before the character of the debt was altered through the agency of Mr. Mann, his attorney, it was in the form of judgments, already due and susceptible of collection by process of execution; for it appears that Denton was able to pay. Diligence in pursuing him was all that was needed. He was arrested, and Mann states in his deposition that, had he insisted on it, the debt, or a great part of it, could then have been realized. But he released the debtor upon the execution of a note, with security, due twelve months after date, thus changing the form of the debt and giving up a valid process available for its immediate collection, and accepting in its place a security of a lower degree, the payment of which could not be enforced or even demanded for the space of twelve months.

Up to this point the interests of the United States were certainly not

advanced in any degree; for Denton being himself solvent, the names of the sureties added nothing to the value of the claim. But those interests were not only postponed but prejudiced. By an agreement, indorsed on the note, it was stipulated that Congress might release Denton, and twelve months' time was given for the express purpose of affording an opportunity to appeal to Congress.—(See Mann's dep.) The result of all this was that Congress did discharge him.

The Secretary of the Treasury was not consulted concerning this arrangement, and it was made wholly without authority from him. Now the question is presented, did the distinctive feature of the contract—community of interest between the parties in the collection of the claim—continue and enter into this agreement on the back of the note, or did it disappear at this point? Did Mann put McKinne's contingent interest at stake upon the action of Congress, or reserve it, leaving the interests of the United States alone in the hands of that body? If the former, McKinne must abide the consequences of his agent's voluntary agreement; if the latter, then it cannot be claimed as a performance of the contract; for no reservation of the twenty-five per cent. in advance of the collection of at least eight thousand dollars could be a performance of the contract. There was no express reservation of the interests of McKinne from the action of Congress, and none could be implied; for the spirit of the contract was that the commission was inseparable from the principal debt. Besides, both were included in the amount of the note and covered by the terms of the indorsement.

But it is urged that the agreement indorsed on the note did not *create* the power of Congress to release the debt, it only recognized that which already existed and might have been exercised without any agreement. This is true of so much of the claim as belonged to the United States; but the very principle upon which the petitioners rest their right to recover is, that Congress could not rightfully release McKinne's interest in the note without his consent. The question is, was that consent given? We say it is found in the agreement indorsed on the note, which seems to us incapable of any other construction.

Suppose Mr. Mann had taken two notes, one to the United States for three-fourths of the claim, and the other to himself for the remaining fourth, being the commission of twenty-five per cent., and had indorsed the same agreement on each of them, would any one deny the right of Congress to discharge both? We presume not. But here all is included in one note, made payable to Mann and assigned to McKinne—the same thing in effect, precisely. But if the agreement on the back of the note did not create the power to discharge the debtors, the granting of twelve months' delay did create the opportunity for the exercise of that power, without which it would have been harmless. This was done by Mr. Mann for the express purpose, as he says, of permitting Denton to appeal to Congress. When Denton was in custody there was no Congress in session to discharge him, and Mann testifies that had he pressed the matter, the whole debt, or a large part of it, would have been paid; yet he, under his authority to "collect," released Denton, changed the form of the demand, and introduced into the contract expressly the new element of congres-

sional reference, with time to give it full effect. It is much more consonant with strict legal principles to charge the attorney who takes a note payable to himself, under such circumstances, with his client's proportion of the claim, leaving to him all risk attendant on the collection of the note, than to reverse the position of the parties, as it is proposed to do in this case. It may be suggested that McKinne entered his objection to the discharge of Denton from liability on the note before Congress. McKinne could not avoid the force of the written agreement indorsed on the note by any subsequent dissent, nor could he, after the lapse of time granted to Denton by his agent had put his interests and those of the United States in jeopardy, relieve himself of his share of the mischief brought about by his own act and cast it all upon his employer. His protest, however, is an act showing his construction of the note and its indorsement, and may be viewed, to some extent, as an admission that the release of the note carried with it his commissions.

We are of opinion that the petitioners are not entitled to relief.

IN THE COURT OF CLAIMS.

April 30, 1860.

C. J. JENKINS AND AL., assignees, *vs.* The UNITED STATES.

LORING, J., dissenting.

The evidence shows that the judgment debts against White and others had been long considered worthless by the United States when the contract with McKinne was made; and that the government were without means or expectation of rendering them available, except by the services and information of Mr. McKinne. Mr. Maxcy, the Solicitor of the Treasury, in his report to the Secretary, dated November 13, 1833, (p. 63,) says: "Considering this debt hopeless without the aid of some person who has more information respecting the means of collecting it than are possessed by the officers of the government, I should think it expedient to accept Col. McKinne's offer of aid, so far as you have power to authorize it." * * * * "I think the best chance the government will have, indeed the only chance, of collecting any considerable portion of the large balance due from White, will be to allow Colonel McKinne to receive twenty-five per cent. of the net amount recovered by his assistance."

Then it appears by the contract, (pp. 82, 83, 84,) that the United States were assured against all loss and expenditure, and were to receive any sum collected less than $8,000 free of costs and charge; while Mr. McKinne's compensation for his labor, and his reimbursement of his expenditures, were conditioned on his collecting $8,000

or over; and if he collected less than that amount, he was to receive nothing, whatever his labor and expenditures might be.

These were the circumstances and terms upon which the United States purchased, and Mr. McKinne sold, his information and his services, for "25 per cent. of the net amount recovered by his assistance."

Then the evidence shows that Mr. McKinne obtained, for the judgments which the United States had considered and found worthless and barren to them, the joint and several note of Denton and four other persons for the whole amount of the principal, and interest due up to the date of the note, which was itself payable with interest in one year. And the evidence, and all the evidence on the point, is, that the note was good and available for its whole amount, and it would have matured and been payable in a few days when it was released.

Then it appears that the United States accepted the note as their property, taken for the judgments. This is conclusively shown on the face of the act, which declares the promisors "are hereby acquitted and discharged," and the discharge of a note is the highest act of ownership; and the act states in terms that the note "was given in consideration of five several judgments," and "is really and in truth for the use and benefit of the United States." And such an acceptance of the note was, I think, an affirmance of all Mr. McKinne had done, when construed, as it must be, with the fact that in all the evidence there is not the slightest indication that the United States, up to the time of the release, ever objected to the note, or intimated in any way that they were not entirely satisfied with the result and whole conduct of the agency, that had secured to them every dollar of the principal and interest of the debt they had so long considered hopeless.

And I think, upon the evidence, the United States had no cause for complaint. Mr. Mann exchanged the judgments for a note, but that note, on the evidence, was of "unquestionable character," and it was on interest, and added the responsibility of four new parties to the responsibility of Mr. Denton, which was all that gave any value to the judgments; his person was arrested but not his property, and it does not appear that that could have been realized immediately or to the full amount of the debt, for Mr. Mann testifies that he was informed "that it would be extremely inconvenient, if not *impossible*, to raise so large a sum on so short notice;" and his strongest expression is, that he believes he might have successfully insisted "upon prompt payment, in cash, of the whole or a *considerable portion* of the claim." This qualification is material, and if the result of legal compulsion was in any way doubtful, either as to the time or full amount of the recovery, a note assuring the whole amount of the debt, and interest on that, might well be the best possible arrangement for the United States, in whose pecuniary interests those of Mr. McKinne were necessarily involved.

The note was drawn at a long time because Mr. Denton represented that, as surety for others, he had been compelled to pay their debt "under peculiarly hard circumstances," justly entitling him to relief which he designed to seek from Congress. But this degree of con-

sideration accorded to Mr. Denton cannot be assumed to have been objectionable or unacceptable to the United States, when they availed themselves of it for the purpose and reasons for which it was granted.

As on the evidence the note was good, and would have matured in a few days when it was released, the United States then actually controlled all the advantages they had sought in their contract with Mr. McKinne. And he, on his part, had performed all the services and borne all the expenditures necessary, upon the evidence, to secure the debt; and all that remained to be done by him, for the full performance of his contract, was the reception of the money. This the United States prevented, and they cannot now object against this claim, the non-performance they themselves caused; from such a defence they are precluded by the morality of the law.

Where a contract is made for the performance of service, either to build a house or collect a note, the contract vests in the party who is to perform the service a right to *the profit on the contract;* that is, a right to do the work stipulated for the price stipulated. Therefore, if, after the service is partially performed, the owner of the land, or of the note, prevents the performance of the contract by selling the land or releasing the note, he does not thereby defeat the right of the other party to his profit on the contract; and such other party may sue on the contract for its price, averring the prevention of performance by the defendant, or he may sue for damages for a breach of the contract. And in neither case can the defendant plead in bar to the action the non-performance he caused, or do more than show, in reduction of damages, what it would have cost the plaintiff to complete the contract, and this only ascertains the profit on the contract. And such, I think, is the legal position of the parties here. The United States having contracted with Colonel McKinne for the collection of the debt for the price stipulated, and then by releasing the note (which, at the least, was a means for collecting the debt) having prevented the performance of the contract, are liable to him for the profit on the contract. They might have shown, in reduction of damages, that the note was not worth its face, or that it would have cost Colonel McKinne something to complete the contract, but this they have not attempted to do, and there is nothing in the evidence that suggests it could have been done.

It was claimed by the United States that the memorandum on the note amounted to an agreement on the part of Mr. McKinne, that the United States might release his interest in the note with their own.

That the parties to the memorandum contemplated that the promisors of the note might be released as to some part of it, is certain; for in reference to a sum to be remitted, the memorandum provides as follows: "then that sum, whatever it may be, shall be deducted from the amount which may be due on the note, and the makers shall be responsible to me for the balance only." But that the parties to the note intended or understood that such relief should be made at the expense of Mr. McKinne, I can see no evidence whatever.

The memorandum is the act and words of Mr. Mann only, and is signed only by him, and as to his purposes he testifies as follows: "This deponent believed that having taken said note he had consum-

mated for his principal, John McKinne, a right to all the benefits which, under his agreement with the United States, were to accrue to him if he secured the debt, and it was not conceived that his principal could be divested of that right by any subsequent act of remission on the part of the United States."—(P. 101.)

On this evidence it seems quite clear that there was no agreement or understanding between the parties to the note that the memorandum released or authorized the release of Mr. McKinne's rights.

The only remaining question is, whether the memorandum by itself and of its own force authorized the United States to infer what they claim; and it is to be recollected that their claim is, that Mr. Mann agreed that Mr. McKinne should surrender over seven thousand dollars of commissions and over a thousand dollars more of expenditures, and that too as a mere gift to Mr. Denton. This certainly is not probable, and therefore requires strong evidence to support it; and where an inference only is relied upon for that purpose, it should be *a necessary inference*, (in the technical meaning of those words,) and as clear and certain as a grant; and to make out such an inference the United States must show that the release of Mr. McKinne's interests was a necessary incident to the relief the memorandum contemplated.

Now certainly the United States might have released a part of the note, which was all that the memorandum contemplated on its face, without releasing any part of the means of paying the stipulated compensation of their agent; and if the United States saw fit to discharge the whole note in their grace and bounty, it was not a necessary incident to their exercise of these virtues that it should be done at the expense of Mr. McKinne, for they could have been just to him and generous to Mr. Denton at the same time.

Besides, the memorandum was required by the form of the note, without any reference to the release of Mr. McKinne's interests, and therefore I think it furnishes no inference whatever for such release. The note, although the property of the United States, was payable to Mr. Mann and negotiable: and if, as the memorandum contemplated, a part of the note was released, it was proper that it should, like a partial payment, be indorsed on the note by Mr. Mann, its nominal payee; the memorandum stipulated for this, and being indorsed on the note attached it to the note in case of its negotiation. It was a defence to Mr. Denton required by the form of the note, and being made for this purpose no other is attributable to it or inferable from it.

And it is observable that the case furnishes no direct evidence whatever that the United States acted upon, or ever entertained, the idea that the memorandum was intended, or operated, to release Mr. McKinne's interests; and they were informed by his protest before they discharged the note that he claimed all his rights.

The right and power of the United States to release the note was incident to their ownership of it; it was not derived from nor affected by the memorandum, nor subject in any way to the control of the parties to it; and I do not see that the memorandum affected the United States, who were not parties to it, nor their contract with Mr. McKinne, which is not mentioned in it.

I am of opinion that the petitioners are entitled to twenty-five per

cent. on the net amount of the money which would have been received on the note if it had been paid at its maturity.

The Solicitor of the Treasury, in his letter to the Secretary, which states and advises the acceptance of Mr. McKinne's propositions, specifies the price as twenty-five per cent. of the *net* amount recovered, (p. 83,) and the Secretary says, in his reply, (p. 24 :) "I assent to the payment of twenty-five per cent.," &c. I think the fair inference is that the acceptance was of the price specified, *i. e.*, twenty-five per cent. *net*, as distinguished from twenty-five per cent. gross, and that Mr. McKinne's expenses are to be deducted from the amount due on the note, and his compensation calculated on the balance, and stated thus :

Note, principal	$32,796 30	
Credits on bonds and interest	2,569 45	
		$30,226 85
Interest to July, 1836		1,813 61
		32,040 46
Less expense of Mr. McKinne, (p. 102)		1,113 35
25 per cent. upon		30,927 11
Due Mr. McKinne.		7,731 77

In forming my opinion I have not used the deposition of Mr. McKinne, because of the objection to it specified by the solicitor, nor the depositions recently filed in the case; these were taken to show the value of Mr. McKinne's services upon "*a quantum meruit*," under a direction from the majority of the court, in which I did not concur, because I considered that form of claim and its rule for damages not applicable to the case. I am of that opinion now.

NEW YORK, *August* 7, 1835.

SIR : I hereby report in brief the result of my agency in the settlement of the claim of the United States *vs.* Joshua E. White & Company and their securities. I have caused satisfaction to be entered on the *ca. sa.s* upon delivery to me of a note, of which the following is a copy. The amount ($32,796 30) of the note is the aggregate of principal and interest due on all the five judgments (after allowing the proper credits as entered on the writs) up to the date of the note :

NEW YORK, *July* 24, 1835.

$32,796 30.

Twelve months after date, we or either of us promise to pay Wm. W. Mann or order, in the city of Augusta, Georgia, thirty-two thou-

sand seven hundred and ninety-six dollars and thirty cents for value received, with interest from date at six per cent. per annum.

G. W. DENTON.
H. W. & S. HILLS.
C. ADAMS.
G. W. HUNTINGTON.
JOHN BARSTOW.

Upon the back of this note I have written and signed an agreement in relation thereto, in terms as follows:

NEW YORK, *July* 24, 1835.

Whereas, Gabriel W. Denton, one of the makers of the within note, has satisfied in full five writs of *ca. sa.*, (and the judgments whereon such writs are founded,) returnable to the next August term of the United States court for the district of Georgia, wherein the United States are plaintiffs and Joshua E. White & Co. and their securities (of whom the said Gabriel W. Denton is one) are defendants; and whereas, the said Gabriel W. believing that he has been compelled, under peculiarly hard circumstances, justly entitling him to relief, to pay to the United States a large sum of money, designs applying to the Congress of the United States, or to some other competent authority, for relief; now, I hereby agree, in relation to the within note, that, if the said Gabriel W., or any other of the makers of the said note, shall, previous to or at the time the within note shall become due, exhibit to me a certificate under the hand of the Secretary of the Treasury of the United States, or of the Solicitor of the Treasury of the United States for the time being, that relief in the premises has been granted the said Gabriel W. by the authority competent to grant the same, and that a certain sum, naming it, has been remitted to the said Gabriel W. Denton by the United States, then that sum, whatever it may be, shall be deducted from the amount which may be due on the within note, and the makers shall be responsible to me for the balance only.

WM. W. MANN, *Payee.*

In relation to the character of the above note, I will state for your satisfaction that I have in my possession a certificate of M. S. Swartwout, deputy collector of the New York custom-house, dated July 24, 1835, addressed to the Secretary of the Treasury, (Mr. Woodbury,) stating, concerning H. W. & S. Hills, (one of the makers of the note,) that he "should not hesitate to receive their bonds at this office (collector's office, New York) to the amount of fifty thousand dollars." So much for H. W. & S. Hills; and I fully satisfied myself, and can furnish proof, that at least two others of the makers of the note are worth, each, three or four times that amount.

I shall now return immediately home and report, and hand over papers to Colonel McKinne, the United States special agent. Should you have any communication to make founded on this letter, or the report which the marshal, Livingston, will I presume shortly make

to you, please address either Colonel Jno. McKinne or myself at Augusta, Georgia.

Most respectfully, your obedient servant,

WM. W. MANN.

V. MAXCY, Esq.,
Solicitor of the Treasury, Washington City, D. C.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 3, 1859.

In pursuance of the 3d section of the act of Congress approved February 22, 1849, I hereby certify that the foregoing is a true copy of an original paper now on file in this office.

In witness whereof I have hereunto set my hand and caused the [L. S.] seal of the Solicitor of the Treasury to be affixed, the day and year first above written.

JUNIUS HILLYER,
Solicitor of the Treasury.

MARSHAL'S OFFICE, NORTHERN DISTRICT OF NEW YORK,
Utica, August 6, 1835.

SIR: Your circular of the 27th May, 1835, notifying the appointment of William W. Mann, esq., as the special agent of the United States in the suits of the United States *vs.* Joshua E. White and others, was presented to me by him, with five writs of *ca. sa.* in these cases issued out of the United States Georgia district court, they were served on one of the defendants, Gabriel W. Denton, who was found at Saratoga Springs, he was brought to New York with the view of sending him to Georgia, as directed by the writs; at that place Mr. Mann, the agent, made an arrangement by which the writs were settled to his satisfaction, and the defendant discharged from custody by his order. I herewith transmit the agent's receipts, No. 1 to 5.

Respectfully,

J. W. LIVINGSTON.

VIRGIL MAXCY, Esq.,
Solicitor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 3, 1859.

In pursuance of the 3d section of the act of Congress approved February 22, 1849, I hereby certify that the foregoing is a true copy of an original letter now on file in this office.

In witness whereof I have hereunto set my hand and caused the [L. S.] seal of the Solicitor of the Treasury to be affixed, the day and year first above written.

JUNIUS HILLYER,
Solicitor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
February 4, 1836.

SIR: Your letter of the 26th ultimo to the Secretary of the Treasury in relation to the petition of Gabriel W. Denton to Congress, to be relieved from the payment of the debt due by the late J. E. White & Co., for which he is surety, has been received and referred to this office, and in compliance with your wishes I enclose a copy to the committee of Congress having charge of Mr. Denton's petition, in a letter of which I now transmit a copy.

I am, &c.,

V. MAXCY.

Colonel JOHN MCKINNE,
Augusta, Georgia.

UNITED STATES COURT OF CLAIMS.

OCTOBER, 1860.

CHARLES J. JENKINS, assignee of McKinne, *vs.* THE UNITED STATES.

The case shows that, in 1819, the United States had recovered certain judgments on custom-house bonds against sundry defendants, of whom Gabriel W. Denton was one. Some of the parties had died, others removed, and all were supposed to be insolvent. Executions were issued from term to term, and uniformly returned no property found.

Thus they remained until 1834, when Colonel John McKinne, of Augusta, Georgia, offered to the Treasury Department to undertake their collection for a conditional fee. This offer was accepted by Mr. Woodbury, then Secretary, in his letter to the Solicitor of the Treasury of 8th September, 1834, in which he says:

"In reply to your communication of the 4th instant, on the application of John McKinne, I have to state that, under all the circumstances, *I assent to the payment of twenty-five per cent. for his services in the collection of* $8,000, *or any larger sum.*"

Mr. McKinne employed to assist him one W. W. Mann, and this was recognized by the department in their instructions to Mann of 27th May, 1835.

The nature of the services rendered under this employment is set out in Mann's deposition, (p. 99,) in which he describes his trave'

to the States of Tennessee, Kentucky, and New York, and also the expenses incurred thereby, amounting to the sum of $1,113 35.

It appears further that Mann succeeded in arresting Denton at New York, where he obtained from him a promissory note, payable in twelve months, for the whole amount due on the said judgments, principal and interest. The note was executed by several securities, all of whom are proved to have been entirely responsible for the amount of it.

A few days after this transaction Mann wrote the department from New York, to wit, 7th August, 1835, giving a full report of everything he had done in the premises; and on the same day the marshal of New York made his report of the same facts.

At the succeeding Congress Denton presented his petition, praying to be relieved from the payment of the note, on the ground that the government had not pursued the other parties to the judgments with proper diligence. In this petition he sets forth the circumstances under which the note was given, the agency of McKinne, the contract of the Secretary for his compensation, and files as exhibits copies of all the letters relating thereto which had been furnished by the department on his application.

In a letter addressed by the solicitor to McKinne, 4th February, 1836, he informs him "that his letter of the 26th ultimo to the Secretary of the Treasury, in relation to Denton's petition, (to Congress,) had been laid before the committee having charge of his petition." That this was true is shown by the report of the committee in the Senate, which refers to it.

Congress, therefore, was in full possession of all the facts of the case, to wit, that Mann had acted as the agent of McKinne in taking the note in satisfaction of the judgments under the contract for compensation to McKinne, entered into with Mr. Woodbury, when they passed the following act, which, on its face, sets forth the material portion of the same:

"That Gabriel W. Denton and his sureties, namely, H. W. and S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, be, and they are hereby, acquitted and discharged of and from a certain joint and several promissory note executed by them to William W. Mann for the sum of thirty-two thousand seven hundred and six dollars and thirty-two cents, which said note bears date New York, July twenty-fifth, eighteen hundred and thirty-five, is payable twelve months after date, at the city of Augusta, in the State of Georgia, and was given *in consideration of five several judgments rendered in August, eighteen hundred and nineteen, by the district court of the United States for the district of Georgia, in favor* of the United States against Joshua E. White and others, of whom said Denton was one, and which said note, *though made payable to William M. Mann, is really and in truth for the use and benefit of the United States: Provided, however,* That nothing in this act contained shall be held to discharge the other parties against whom said judgments were rendered, or prevent the enforcement thereof against them, their heirs or representatives."—(6. U. S. L., 665.)

Approved 2d July, 1836.

On this statement of the facts of the case the simple question is, whether, as the government thus arrested the collection (a few days before the money would have been paid) by discharging the debt, the agent is not entitled to receive the compensation provided by his contract.

All the evidence shows that the parties to the note were entirely responsible, and that the note would have been paid at maturity had it not been released. Can the government shield itself from liability by the mere *presumption that it might not have been paid?*

If the exigency of the case required it, it could easily be shown, by well established principles, that the agent, under the circumstances of this employment, was fully authorized to take the note in settlement of these old judgments.

Nor need we go into the question whether the Secretary was authorized to make such a contract, though this is equally well established. This subject has been fully considered by the Attorney General, who says: "According to the *traditional practice* of the government, it has belonged to the attributes of any head of a department to employ counsel in his discretion for the conduct of legal business arising in his department."—(7 vol. Opinions, 141; United States *vs.* Henderson, 3 McLean, 186.)

I forbear further to discuss these questions, because unnecessary. It is sufficient that the *principal has, with a full knowledge of all the facts, ratified these transactions of its agents.*

No rule is better settled, says Chief Justice Best, than "that a subsequent sanction is considered the same thing in effect as an assent at the time."—(4 Bing., 722; Pelkington *vs.* Green, 2 B. and P., 151.)

The right of recovery, in this case, rests upon the ground that the agent was prevented by the act of his principal from completing the service he had undertaken by his contract to perform. In all such cases the principal is bound to make good the compensation provided by the contract.

A recovery is, however, resisted upon the objection that McKinne has forfeited his right to compensation by force of the agreement indorsed by Mann upon the back of the note, which is as follow:

"Whereas Gabriel W. Denton (one of the makers of the within note) has satisfied in full five writs of *ca. sa.*, (and the judgments whereon said writs are founded,) returnable to the next August term of the United States court for the district of Georgia, wherein the United States are plaintiffs and Joshua E. White & Co. and their securities, (of whom the said Gabriel W. Denton is one,) are defendants; and whereas the said Gabriel W., believing that he has been compelled, under peculiarly hard circumstances, justly entitling him to relief, to pay to the United States a large sum of money, designs applying to the Congress of the United States, or to some other competent authority, for relief: Now, I hereby agree, in relation to the within note, that if the said Gabriel W. Denton, or any other of the makers of the said note shall, previous to or at the time the within note shall become due, exhibit to me a certificate under the hand and seal of the Secretary of the Treasury of the United States for the time

being, or of the Solicitor of the Treasury of the United States for the time being, that relief in the premises has been granted to the said Gabriel W. by the authority competent to grant the same, and that a certain sum, naming it, has been remitted to the said Gabriel W. Denton by the United States, then that sum, whatever it may be, shall be deducted from the amount which may be due on the within note, and the makers shall be responsible to me for the balance only.

"W. W. MANN, *Payee.*

"NEW YORK, *July* 24, 1835."

The object and purport of this agreement is very apparent. Mann having taken the note payable to *his own order*, it was necessary for Denton's security, as he intended to apply to Congress for relief, to *restrain its negotiability*. Hence Mann agrees to give credit on the note for any amount which may be certified by competent authority *previous to its maturity*. It was not necessary to stipulate for any credit *subsequent to the maturity*, because the *law itself afforded the protection* if the note was negotiated after it became due.

It is difficult to understand, then, how these plain words can be distorted to mean that thereby McKinne agreed to forfeit all he had done and expended in this service, and wholly to relinquish all right to compensation.

The parties to this agreement are Mann on one side and Denton on the other; neither of them had any concern with McKinne's compensation. Mann was McKinne's agent to *collect the debt*. He had *no power from him to release his rights* under the contract.

Mann swears, in his deposition, that he had no idea that he had in any manner affected McKinne's rights under his contract, and Denton, while applying for relief to Congress from the note, makes no pretence that such was his understanding.

As neither party to the agreement so understood it, what is there in its terms which would compel a judicial tribunal to give such effect to it?

It is said, by taking the note on time, it afforded Denton "an opportunity" of appealing to his creditor for relief. To say nothing of the inhumanity of the act, if Mann had refused it, the objection falls with a strange cadence on the ear when coming from the lips of the creditor himself.

The note was wholly the property of the government, though made payable to Mann. McKinne owned no portion of it. He had an interest in its collection, for when collected he was to receive a certain per centage. The government, therefore, only exercised a power which rightfully belonged to it as owner, when it discharged the makers from their obligation to pay it.

The right thus exercised was not derived from or dependent on the agreement thus entered into between Mann and Denton, but from the proprietary interest in the note itself.

Suppose the act had been passed *subsequently* to the maturity of the note, it would not have fallen within the words of the agreement, and yet who can doubt that the release could have been as successfully pleaded to an action brought by Mann on the note as if it had been passed before the maturity.

This demonstrates that no agreement *which could have been made* by Mann would in the least have added to or diminished the power of Congress to deal with the note as suited them.

It is, therefore, utterly futile to say that Mann was in fault in not inserting a stipulation reserving McKinne's right, or that he should have taken two notes—one for three-quarters of the amount, and the other for one quarter, (the amount equivalent to his contingent compensation,) indorsing the agreement only on the former. Would this have taken away the power of Congress to discharge both of them? To suppose it would is to assume that when a principal authorizes an attorney to collect a note or other debt for a commission, provided either by law or contract, he thereby parts with his rights of ownership in the *debt itself* to an amount equal to the commissions. This is too palpably erroneous to need a serious refutation.

In the very nature of things, the debt being due to the government, its agent could by no device or agreement have excluded the principal from full power and control over the subject-matter.

The case stands precisely in the same position it would have occupied if Denton had deposited the money in a bank subject to the future order of the government, as to whether it should be returned to him or be paid into the treasury. And, in such a case, can there be a rational doubt if the government had ordered it to be refunded it would have been bound to pay the commissions due for its collection?

It is said that "community of interest" is the distinguishing feature of this contract, and that as the government has received nothing McKinne can receive nothing. "Community of interest" does not distinguish this any more than it does all other contracts. Doubtless it was entered into for mutual benefit to be derived, and on the expectation that both parties would gain by it. But when one party arrests the performance of a contract which he has entered into, the presumption is that he finds it to his "interest" to do so. If A contract with B to carry certain goods by a steamboat from one port to another, and B furnishes his boat at the proper time and place, and then A refuses to deliver the goods, could he avoid the payment of damages on the plea that the contract was founded upon "community of interest," and as the goods were not carried he ought not to be compelled to pay?

Here, when the agent was on the eve of consummating the service, the government steps in, and, on considerations satisfactory to itself, refuses to permit the collection of the debt for which the note was taken. Further to controvert such a position would be to attempt to beat the air. The arm that gave the blows alone would suffer.

I conclude, therefore, with unshaken confidence, that the agreement indorsed on the note has no effect upon the question whether McKinne is entitled to his compensation. It can have no such effect, for the simple reason that the undertaking to give credit on the note only recognizes an obligation to do that *which the law would have compelled him to do had he made no agreement.* No amount of ingenuity can make it any more or less.

It has been intimated that this contract is not entitled to very favorable consideration, as somewhat savoring of "maintenance." If so,

McKinne might well be excused, as he fell into the error with one of the highest officers of the government, subsequently a judge of the Supreme Court of the United States. But a mere reference to the definition of maintenance, whether at the common or civil law, will show that the purchase of a *judgment*, which is itself the result or determination of *litigation*, is not included in its denunciation.

Beside which this contract was not for a *part of the judgment*, but for a certain commission. To which may be added, that the doctrine of maintenance is inapplicable to a contract made with the government.—(McMicken *vs.* Perin, 18 Howard, 510; Floyd *vs.* Goodwin, 8 Yerg., 488; Evans *vs.* Bell, 6 Dana, 477.)

The case stands, then, without a disputed fact or doubtful question of law. McKinne has done everything under his contract, which, as a faithful agent, he was bound to do. He has freely expended his time and money in accomplishing his agency. The government, his principal, has at all times been kept promptly advised of his proceedings, and from the beginning to the end it has never uttered a word of complaint, or in any manner objected to them. On the contrary, by its silent acquiescence and by its positive acts, they have fully confirmed and ratified all that he has done.

If, under these circumstances, McKinne can be deprived of his compensation, it must be on some legal principle, of which the profession is at present ignorant.

P. PHILLIPS,
Solicitor for Petitioner.

OCTOBER 23, 1860.

IN THE COURT OF CLAIMS.

JENKINS AND MANN, assignees of John McKinne, *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claims for commissions on collecting a debt for the United States.

MATERIAL AVERMENTS IN THE PETITION.

1. That John McKinne was employed by the Treasury Department to collect certain debts growing out of duty bonds, and that on collection of at least $8,000 he was to be allowed at the rate of twenty-five per cent. on the whole amount collected.

2. That he did collect $32,796 30 in 1835, and was then entitled to a commission of $8,199 07, on which he is entitled to interest.

This is what the solicitor supposes is intended by the averment, although the strict statement seems to set forth a different, and, as he deems, immaterial fact.

3. That McKinne became insolvent, and, under the insolvent laws of Georgia, he made a general assignment to the plaintiffs.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

1. That the Solicitor of the Treasury, with the assent and authority of the Secretary, made a contract with John McKinne to collect debts due from E. White & Co. and their sureties, of whom Gabriel W. Denton was one, which were then in judgments, and to allow him, if he collected $8,000 or upwards, a commission of twenty-five per cent. for such collection.—(Secretary's and Solicitor's statement, R., pp. 24, 25, 26.)

2. That McKinne commenced operations, and obtained writs of *ca. sa.* against Denton, on which he was arrested, in 1835, in the northern district of the State of New York.

3. That instead of imprisoning Denton or receiving the money, McKinne's agent took a promissory note, signed by him and others, for $32,796 30, being the amount of said judgments, and said judgments were discharged.

4. That said note was in the usual form, payable to William W. Mann or order, twelve months after date, with interest at six per cent., and had a condition of defeasance indorsed thereon in the following words:

"Whereas Gabriel W. Denton (one of the makers of the within note) has satisfied in full five writs of *ca. sa.*, (and the judgments whereon said writs are founded,) returnable to the next August term of the United States court for the district of Georgia, wherein the United States are plaintiffs and Joshua E. White & Co. and their securities (of whom the said Gabriel W. Denton is one) are defendants; and whereas the said Gabriel W., believing that he has been compelled, under peculiarly hard circumstances, justly entitling him to relief, to pay to the United States a large sum of money, designs applying to Congress of the United States, or to some other competent authority, for relief: Now, I hereby agree, in relation to the within note, that if the said Gabriel W. Denton, or any other of the makers of the said note, shall, previous to or at the time the within note shall become due, exhibit to me a certificate under the hand and seal of the Secretary of the Treasury of the United States for the time being, or of the Solicitor of the Treasury of the United States for the time being, that relief in the premises has been granted to the said Gabriel W. by the authority competent to grant the same, and that a certain sum, naming it, has been remitted to the said Gabriel W. Denton by the United States, then that sum, whatever it may be, shall be deducted from the amount which may be due on the within note, and the makers shall be responsible to me for the balance only.

"W. W. MANN, *Payee.*

"NEW YORK, *July* 24, 1835."

On this note was indorsed the following:

"Pay to the order of John McKinne without recourse to me.

"WM. W. MANN."

5. The note was made payable at a distant day to enable Denton to apply to Congress for relief.

Mann: "The note was drawn at long time solely that Denton might have the opportunity of applying to Congress for relief, and avoid the inconvenient advancement of a large sum, from the payment of which he might eventually be absolved.—"(R., p. 101.)

6. Congress passed a law just before the note fell due declaring as follows:

"That Gabriel W. Denton and his sureties, namely, H. W. and S. Hills, C. Adams, jr., G. W. Huntington, and John Barstow, be, and they are hereby, acquitted and discharged of and from a certain joint and several promissory note executed by them to William W. Mann for the sum of thirty-two thousand seven hundred and six dollars and thirty-two cents, which said note bears date New York, July twenty-fifth, eighteen hundred and thirty-five, is payable twelve months after date, at the city of Augusta, in the State of Georgia, and was given in consideration of five several judgments, rendered in August, eighteen hundred and nineteen, by the district court of the United States for the district of Georgia in favor of the United States against Joshua E. White and others, of whom said Denton was one, and which said note, though made payable to William W. Mann, is really and in truth for the use and benefit of the United States: *Provided, however*, That nothing in this act contained shall be held to discharge the other parties against whom said judgments were rendered, or prevent the enforcement thereof against them, their heirs or representatives.—"(6 U. S. L., 665.)

7. The note given to Mann does not appear to have been transferred to the United States, or to have been collected by any one; nor does it appear that the judgments against J. E. White and others have ever been collected or paid, unless the taking of said note was collection and payment.

8. The note given to Mann bears date July 24, 1835, while the one described in the act of Congress bears date the 25th of that month.

9. John McKinne, under proceedings in a court in Georgia, made an assignment of his property to the plaintiffs in this suit, and if he had a legal demand against the United States they would be authorized to receive the same.

10. There is no evidence of any new or further agreement made between McKinne and the Treasury Department after the one by which he arranged, in 1834, to collect the judgments referred to.

LEGAL PROPOSITIONS.

FIRST. *The note and indorsement constitute one agreement, and must be construed together.*

The note and indorsement, by their terms, were to be taken together. The latter refers to the former, and controls it. The two things constitute one transaction. Such was the intention of the parties, and they cannot now be separated. Whoever should take the note would do so subject to the condition indorsed thereon as a part of it. It is probable Denton's sureties signed the note because they expected the conditions would be performed, and he and they released therefrom.

SECOND. *The note and indorsement taken together constitute a conditional agreement.*

The witness Mann states what the object of the transaction was. The note was made payable at a future day expressly to enable Denton to get discharged from it, and the indorsement specifies the conditions which were imposed by the makers. The agreement, in legal effect, was, that the parties thereto would pay, if Congress or some other competent authority would not discharge before the note fell due. The defeasance makes a part of the agreement, and all parties to the note were bound by it.

THIRD. *There being a condition or defeasance in the contract, the discharge in conformity thereto cannot lay the ground of legal or equitable rights.*

Congress, in passing the law, if it really reaches this note, did what was contemplated by the agent of McKinne when he executed the indorsement made upon the note. He gave a long time of payment for the express purpose that the condition might be complied with, and thereby prevent the note from ever being paid. The condition having been performed, the note was not payable if it had been transferred to the United States, which it seems did not happen. As Congress did what the parties contemplated by their agreement, there can be no ground of complaint.

FOURTH. *The receiving the note by Mann was not a collection of the judgments, and consequently no commissions were earned or are payable.*

Mann discharged the judgments, but did not collect them. Taking an obligation, if perfectly good, is not payment of the debt. It only changes the form of the debt or the parties to it. It still remains to be collected. When Mann took the note he had not made the money, and the commissions could not be retained. He had no authority to take a note or extend the time. McKinne's agreement was to collect. If he had done that his principal would have been entitled to the commissions agreed upon, and could have retained them in his own hands and paid over the balance. No new agreement is averred in the petition or proved by which the United States agreed to take this note instead of so such money. McKinne did not perform his first contract, nor make a second one. The Treasury Department received nothing, and could not lawfully pay commissions when no money was collected to pay with. McKinne's agent, in receiving a note, did what he was not authorized to do under the contract made with the department, and what the department never sanctioned. The United States lost their judgments by Mann's discharging them. The resolution in the act of the right to collect of the parties other than Denton was unavoidable, because the judgments referred to were already discharged and nothing but a conditional note taken, and even that was never transferred to the United States, but was released, as far as Congress could do it, in strict conformity with the conditions which formed, in law, a part of it. Mann had made provision for the

discharge without even providing for the commissions now claimed by his principal. If he had collected the money, he could and would have retained his commissions. If he had expected to get them out of the note, he should have provided for that instead of making a condition that covered the whole claim, with the expectation it would be complied with, and defeat it. No collection was in fact ever made, and no commissions were educed or can now be allowed by law. The department could only pay in the special manner agreed upon, and it could not pay in any other manner, and there has been no agreement by anybody in any other way. Consequently there is no legal liability to enforce.

FIFTH. *The deposition of John McKinne is not admissible in evidence in this case because he is interested.*

Although McKinne has assigned his property, he is interested in the proceeds of the assignment. It may produce a surplus after paying his debts, to which he would be entitled. He is therefore interested in increasing the amount to be collected by the assignees. His deposition must therefore be struck out.

R. H. GILLET, *Solicitor.*

Dated November 22, 1859.

IN THE COURT OF CLAIMS.

NOVEMBER 20, A. D. 1860.

CHARLES J. JENKINS and WILLIAM W. MANN, assignees of John McKinne, *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

On the 30th day of April, A. D. 1860, this court (Loring, J., dissenting) delivered an opinion that the petitioner is not entitled to relief. Afterwards, at the instance of the petitioner, a rehearing was granted, and this case has been reheard and again maturely considered by the court.

In presenting the reasons on which our present judgment is founded, we shall notice only such of the facts as we may deem necessary to render our views intelligible.

The Solicitor of the Treasury, in a letter to the Secretary of the Treasury, dated November 13, A. D. 1833, states that John McKinne had made an offer of his assistance in collecting the judgments in the proceedings mentioned on the following terms: "that he shall be allowed 'to receive twenty-five *per cent.* on the amount collected, and to ask nothing for his services if he does not collect at least $8,000, provided the government will allow him to compromise the claim for $8,000, or any sum beyond that amount which he can obtain, and order such of the district attorneys as he may call on and the Attorney General to give him such advice and legal assistance as he may

require.'" Considering the debt hopeless without the aid of some person who had more information respecting the means of collecting it than was possessed by the officers of the government, the Solicitor of the Treasury thought it expedient that McKinne's offer should be accepted, so far as the Secretary had power to authorize it. He stated, moreover, that if McKinne would be satisfied with the condition suggested by the Solicitor, he thought the best chance the government would have, indeed, the only chance, of collecting any considerable portion of the large balance due from White, would be to allow McKinne to receive twenty-five *per cent.* of the net amount recovered by his assistance.

It does not appear that the letter of the Solicitor was acted upon by the Secretary, but subsequently, viz: on the 4th day of September, A. D. 1834, a letter of McKinne to the Secretary of the Treasury having been referred to the Solicitor's office for a report, the Solicitor returned his letter of November 13, A. D. 1833, and asked that it might be considered his report thereon. On the 8th day of September, A. D. 1834, the Secretary replied that, under all the circumstances, he assented "to the payment of twenty-five *per cent.* for his (McKinne's) services in the collection of the eight thousand dollars, or any larger sum;" that the aid of the district attorney would be given in the usual way, but that he did not believe that it was competent for him to make any compromise for the residue. On the 14th day of October, A. D. 1834, the Solicitor, in a letter to McKinne of that date, enclosed to him a copy of the Secretary's reply, and said: "I now enclose you a copy of his letter to me, in which he accepts the terms proposed so far as to allow you twenty-five *per cent.* of the amount received, and to afford you the assistance of the district attorneys in such districts as you may find necessary to institute legal proceedings in." This was satisfactory to McKinne, and the bargain was closed.

The foregoing papers, then, set forth the contract between McKinne and the Secretary of the Treasury. Under it McKinne was authorized to collect the judgments already noticed; if he succeeded in collecting $8,000 or a larger sum, then he was to receive twenty-five *per centum* thereof as compensation for his services, but if he did not collect at least $8,000 he was to receive no compensation whatever. It was under the authority of this contract that McKinne acted. He appointed W. W. Mann his sub-agent, and this appointment was impliedly approved of by the Treasury Department.—(See the letter of the Solicitor of the Treasury to W. W. Mann, dated May 27, A. D. 1835.)

Upon his arrest under the writs of execution mentioned in the petition, Gabriel W. Denton, one of the defendants therein, with five others, his sureties, executed and delivered a promissory note for $32,796 30, payable to Mann, twelve months after the date thereof, and subject to a commission, indorsed thereon by Mann, and Denton was thereupon discharged from custody. The note and the condition were one transaction. Whether Mann had authority to receive the note, and thereupon to discharge Denton, is not now a material question. If he had such authority, then it was expressly or implied

embraced by the contract between McKinne and the Secretary of the Treasury. If he had no such authority, but his acts were subsequently ratified and approved of by both his immediate principal and the United States, then it is the same thing as if it had been conferred upon him in the first instance. The petitioner's counsel insists, with much plausibility, "that the agent, under the circumstances of this employment, was fully authorized to take the note in settlement of these old judgments." It would, perhaps, not be considered too liberal a construction of the contract to infer from it the power to adopt the very course pursued by Mann. If the debt were really due, and ought to have been paid, and the sureties, in fact, possessed the pecuniary ability to meet it at maturity, the course taken may have been the best perhaps the only means of securing its eventual collection. If, on the other hand, there were circumstances connected with it which *ex æquo et bono* entitled Denton to legislative relief, then it was a course clearly demanded by justice and good morals. It might not, therefore, be going too far to say that under the general power to collect authority to adopt means so consonant with propriety was included. But we need not decide this point. Both McKinne and the United States have ratified and approved of the acts of Mann, and the present petitioners now insist upon their validity. All parties are now bound by them precisely as if full authority to do them had been given in the original contract.

We must, then, regard this case as if the acts of Mann in taking the promissory note, subject to the condition indorsed thereon, had been expressly authorized by the contract between McKinne and the Secretary of the Treasury. So considering it, what was that contract? In order the better to understand it, let us state McKinne's proposition to undertake the collection of the judgments, with the matter referring to the acts done by Mann, set out in express terms. That proposition so stated would be as follows: "I propose to undertake the collection of the said judgments, and to this end to sue out writs of *capias ad satisfaciendum* thereon; that if on the arrest of the defendant, Denton, he, with five good sureties, will execute and deliver a promissory note for the amount appearing to be due on the judgments, payable to my sub-agent, twelve months after the date thereof, and conditioned that if at or before the maturity of the note he shall exhibit the proper evidence *that relief in the premises has been granted to him by the authority competent to grant the same*, and that a certain sum has been remitted to him by the United States, then that sum shall be deducted from the amount due on such note, and the makers be responsible for the balance only, I shall be at liberty to accept such note, and discharge the said Denton from custody; and if I succeed in collecting $8,000, or more, then that I shall receive twenty-five *per centum* of the amount collected as compensation for my services; but if I do not succeed in collecting at least $8,000, then that I shall receive no compensation." This proposition so made is accepted by the Secretary of the Treasury, and the bargain is completed. In thus stating McKinne's proposition, we but set out in express terms, it will be observed, what is either implied, or is to be treated as if inserted therein by reason of the subsequent ratification by him and the United States of

the acts of his sub-agent. In so stating it, therefore, we do full justice to all concerned. But it is plain, from this statement, that under such a contract McKinne would take not only the risk of the contingency of the makers of the note being able to pay at least $8,000, if the payment of the note should be enforced against them, but also the risk of Congress granting relief to Denton within the time limited by the condition indorsed on the note. His compensation would depend on the collection of at least $8,000, and such collection might be defeated under the very terms of the contract, as well by the action of Congress as by the inability of the debtors to pay the required amount. In either event, that sum would not be realized; and both of them would be contemplated by the contract (the one as much as the other) as contingencies, upon the happening of either of which McKinne would be entitled to no compensation.

Let us look at this point a little more closely. The actual agreement expressly was, that upon the exhibition of the evidence agreed on, previous to or at the maturity of the promissory note, "that relief in the premises has been granted to the said Gabriel W. by the authority competent to grant the same, and that a certain sum, naming it, has been remitted to the said Gabriel W. Denton by the United States, then that sum, whatever it may be, shall be deducted from the amount which may be due on the within note, and the makers shall be responsible to me for the balance only." Now this, though in form an agreement between Mann and Denton, was, in fact and in law, an agreement between McKinne, as the agent of the United States, and Denton, and was, or (what is the same thing) afterwards became, equally obligatory on all concerned. It was not, it is true, a contract by McKinne to release his compensation. That had been previously arranged. But it was a contract that the collection of the money might be defeated, if "relief in the premises" should be "granted to the said Gabriel W. by the authority competent to grant the same;" and McKinne's compensation, by the express terms of his contract with the Secretary of the Treasury, was dependent upon the collection of at least $8,000. The contract that the collection of the money might be so defeated was McKinne's own act; and under it he voluntarily, of his own free choice, took the risk of the contingency contemplated by it, that relief might be granted to Denton "by the authority competent to grant the same." The contract being made, if it was, as the petitioners now contend, and the United States have conceded by its adoption, valid and binding upon all concerned, it was the duty of *the competent authority*, in fulfilment of its requirements, to consider whether relief should be granted, and if, in the judgment of that authority, relief was due, to grant it. This duty resulted from the contract, if it did not exist independently of it. By the contract, McKinne's own act, it was made especially imperative upon "the competent authority." It was performed in good faith, and the relief was granted by the act of Congress approved July 2, A. D. 1836.—(6 Stat. at L., p. 665.) McKinne cannot now complain that an act done in fulfilment of his own bargain, and clearly provided for and contemplated by it, is an act of injustice to him.

can he, after contracting that his compensation should depend upon the collection of at least $8,000 of the debt, now justly insist upon his compensation, as if the whole amount was collected, when the collection was defeated in pursuance of his own arrangement. Nor can he justly complain that he was prevented from making the collection, when the very act which prevented it was one to which he had previously given his own assent. He expressly bargained with Denton that if relief should be granted him by the "competent authority" the sum remitted should be deducted from the amount due on the note, and that the makers should be responsible for the balance only. Thus his assent was given in anticipation, and it was but for Denton to obtain the assent of Congress, and then his relief would be perfected in pursuance of the mutual consent of the only parties having interests opposed to his own. We must intend, too, that McKinne acted with a due regard not only to justice and right but to his own interests. What could he have made if the note had not been accepted? We have no means of determining. We cannot say that the note would have been given without the condition annexed to it. It is alleged, and there is evidence on this point, that by the note the debt was rendered secure; that is, that the promissors would have been able to pay the amount thereof. McKinne might well have preferred such a note, with the risk of the contingency of a release by Congress, to his chances under the regular operation of the writs of execution. He did prefer it. He voluntarily accepted it, and, in consideration thereof, discharged Denton from custody. His was a speculation at best; and he determined to risk all on the action of Congress. He acted accordingly, and was disappointed. He has now no claim for remuneration from the United States.

Our opinion is that the petitioner is not entitled to relief.

Judge LORING. I adhere to the opinion I read when the case was first heard.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 264.

JACQUES CHARLANT.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JACQUES CHARLANT vs. THE UNITED STATES.

1. The petition of the claimant, and printed copy of evidence in the case.
2. United States solicitor's brief.
3. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.—No. 328.

JACQUES CHARLANT *vs.* THE UNITED STATES.

Schedule.

1. The petition in the Court of Claims, (A.)
2. The petition to Congress, (B.)
3. The House report No. 330, 34th Congress, 1st session, (C.)
4. The House bill No. 330, 34th Congress, 1st session, (D.)
5. Letter from Pension department, (E.)
6. Proof of heirship, &c., (F.)
7. Letters of administration, if necessary.

APRIL 11, 1859.

SIR: Please take notice that the above is a schedule of the evidence in this case on file in this court, and that the testimony is closed on the part of the claimant.

Yours, &c.,

C. K. AVERILL,
Attorney for Claimant.

The U. S. SOLICITOR.

A.

To the honorable Judges of the Court of Claims of the United States:

The petition of Jacques Charlant, of St. Anthenos, Canada East, the only surviving child and heir-at-law of Peter Charlant, deceased, begs leave respectfully to represent unto this court that he is interested as the child and heir-at-law in a claim which the said Peter Charlant had against the United States to a pension for services and wounds received in the revolutionary war, who made application, and died on the 3d day of March, 1820, before the same was allowed.

And your petitioner further states that his father, Peter Charlant, was a sergeant in General Hazen's regiment, and served to the close of the war; that he was wounded and disabled in the service of the United States in said war, and lost his left eye from the wound of a bullet in the forehead, which fractured his skull; he was also wounded in the hand and in the body by bullets; the latter wound was the cause of his death, from which he gradually wasted away.

And your petitioner further states that under the act of Congress, March 3, 1792, entitled "An act for the settlement of the claims of widows and orphans, barred by the limitation heretofore established, and to regulate the claims to invalid pensions," the father of your petitioner, then being in Boston, applied to the judges authorized by said act, who recommended his case to Congress, in substance, that at the May term, 1792, before the judges of the circuit court of the United States for the district of Massachusetts; that Peter Charlant preferred a petition setting forth his services in said war till he was wounded and taken prisoner by the enemy; and after his return, again engaged in the service and was disabled therein; that he personally appeared before said court, and it appeared he was a native of Canada and attached to the command of General Hazen, but what rank did not clearly appear; that in the service of the United States he was wounded by a party of the enemy and disabled by having a ball pass into his body, another through his left hand, and by a third his skull was fractured, and he was thereby deprived of the use of his left eye, from which wounds he was disabled from procuring a livelihood by labor; that his disability was satisfactorily proved to them, and that it happened while in the service of the United States; but as he was not an inhabitant within the United States he had not procured any certifi-

cate from the freeholders of the town, city, county or parish where he lived, and which could not possibly be procured. But they say:

"We have considered him as entitled (if within the intention of the act) to the half pay of a sergeant, and to two hundred dollars as arrears of pay; he appears to have been allowed, while on one of his journeys in the service of the United States, by order of the Secretary of War, one ration and a half. We really think he ought to be provided for. He is now poor and much distressed, and we warmly recommend him to the notice and benevolence of Congress.

"JOHN JAY.
"JOHN LOWELL."

Your petitioner shows further that said claim was reported to Congress, (see American State Papers, Claims, vol. 3, pages 68, 109,) but no action had thereon. Also, that your petitioner applied to Congress in 1854, but he is not advised what action was had thereon.

Your petitioner, therefore, prays that this honorable court will report a bill for the payment of said arrearages of two hundred dollars, and the interest thereon, and also the monthly allowance of five dollars, as certified by the judges, from the time they so certified until his death, and that the same be paid to his child or children.

And your petitioner, as in duty bound, will ever pray.

Dated September 19, A. D. 1855.

JACQUES his + mark. CHARLANT.

CANADA EAST, } *ss:*
County of Iberville, }

Jacques Charlant, of St. Anthenos, in the county of Iberville, Canada East, being duly sworn, doth depose and say that the petition above, by him subscribed, contains the truth, according to the best of his information and belief.

JACQUES his + mark. CHARLANT.

Sworn and subscribed before me, V. Runlette, this 19th day of September, A. D. 1855.

V. RUNLETTE, [L. S.]
Notary Public.

B.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Jacques Charlant, the only surviving child of Peter Charlant, a revolutionary invalid pension claimant, respectfully shows unto your honorable body that the said Peter Charlant was a sergeant in the Congress regiment, commanded by Brigadier General Mos-

Hazen, in the revolutionary war, and served through the war; that the said Peter Charlant was an inhabitant of St. John's, in Canada, at the breaking out of the American revolution, and the owner of real estate, which was confiscated and lost to him in consequence of the active part he took in the war against Great Britain; and he was obliged to flee, and seek protection in the United States, and enlisted in its service.

And your petitioner further shows that the said Peter Charlant, in the service of the United States, was once a prisoner and three times wounded in engagements with the enemy, and was disabled through life, with the loss of his left eye, by a wound he received in his head, and thus deprived of the means of procuring a sufficient subsistence for himself and wife, who were thrown on the bounty of their children for support until his death in 1820, and her death in 1838. And your petitioner further shows that, in May term, 1792, the said Peter Charlant made application to be placed upon the invalid pension roll, under the act of Congress, in 1792, and received a certificate from the honorable judges of the circuit court of the United States for the district of Massachusetts, which concluded as follows:

"We have considered him as entitled (if within the intention of the act) to the half pay of a sergeant, and to two hundred dollars as arrears of pay; he appears to have been allowed, while on one of his journeys in the service of the United States, by order of the Secretary of War, one ration and a half; we really think he ought to be provided for; he is now poor and much distressed, and we warmly recommend him to the notice and benevolence of Congress."—(See American State Papers, Claims, No. 1, vol. 3, pp. 68, 109.)

And your petitioner further shows that the said Peter Charlant and his widow died without ever having received a pension, or the arrearages of pay due to him at the close of the revolutionary war, or other losses. He therefore prays your honorable body will take into consideration the justice of his claims as the sole heir and child of his father, and pass an act or law that his heir or legal representative shall be entitled to receive the arrears of pay, as certified due to him, with reasonable interest; and that the children of the said Peter Charlant be entitled to receive from the United States the pension he would have been entitled to receive, had his claim been then allowed, from the time of his application until his death.

All which is respectfully submitted.

JACQUES CHARLANT,
By CALVIN K. AVERILL,
His Attorney.

C.

PETER CHARLANT—HEIRS OF.—REPORT No. 330.

[To accompany Bill H. R. No. 559.]

IN THE HOUSE OF REPRESENTATIVES, *August* 8, 1856.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following report:

The Committee on Revolutionary Pensions, to whom was referred the petition of Jacques Charlant, report:

That the original merits of this claim have been heretofore examined and certified to Congress by the judges under the acts of Congress granting invalid pensions, (see American State Papers, Claims, vol. 3, pp. 68, 109,) as follows:

"Certificate of the judges of the circuit court of the United States for the district of Massachusetts in favor of Peter Charlant.

"We, the subscribers, judges of the circuit court held at Boston, in and for Massachusetts district, in May, 1792, as commissioners, designated in, and in execution of, the act entitled 'An act for the settlement of the claims of widows and orphans, barred by the limitation heretofore established, and to regulate the claims to invalid pensions,' do certify that Peter Charlant preferred a petition to us, setting forth that he was, at the commencement of the late war, a volunteer in the service of the United States, and continued in that service, in various characters, till he was wounded and taken prisoner by the enemy; and after his return, again engaged in that service, and was disabled therein. He personally appeared before us, and it appears that the said Peter Charlant is a native of Canada, and that he attached himself to the American cause early in the war; that from the time the American forces were in Canada until the conclusion of the war he was frequently engaged in the service of the United States, at certain times leading numbers of Canadians to attack the enemy; at others, as a volunteer with the troops of the United States. He for some time appears to have been attached to the corps under the command of General Hazen, but in what rank does not clearly appear to us; that in the service of the United States he was employed to carry letters to and from Canada, and that on one of these errands he was wounded by a party of the enemy and disabled by having a ball pass into his body, another through his left hand, and by a third his skull was fractured, and he was thereby deprived of the use of his left eye; by which wounds he has been very much disabled from procuring his livelihood by labor, which appears to have been his usual employment. His disability is satisfactorily proved to the commissioners, and that it happened while in the service of the United States; but as he is not an inhabitant within the United States, he has not procured any cer

tificate from the freeholders of the town, city, county, or parish where he lives, nor can such probably be procured.

"We have considered him as entitled (if within the intention of the act) to the half pay of sergeant, and to two hundred dollars as arrears of pay; he appears to have been allowed, while on one of his journeys in the service of the United States, by order of the Secretary of War, one ration and a half. We really think he ought to be provided for. He is now poor and much distressed, and we warmly recommend him to the notice and benevolence of Congress.

"JOHN JAY.
"JOHN LOWELL."

A list of certificates transmitted by direction of the judges of the circuit court for the district of Massachusetts, of invalid pensions examined by them at the said court, specifying the monthly allowance due to them. May term, 1792.

Name.	Rank and regiment.	Disability.	When and where disabled.	Residence.	Monthly allowance.	Arrearages.	Remarks.
Peter Charlant.....	------	------	------	------	$5 00	$200 00	Not on the muster-rolls of the Massachusetts line, supposed to be militia.

It is ascertained by your committee that the said Peter Charlant, discouraged at the delays and inattention of Congress to redress his claims, and unable to prosecute it further, and to subsist alone, returned to his family and native country, from which he had been ejected, with the loss of his property, and remained there supported by his children until the year 1820, when he domiciled in Champlain, in the State of New York, with a view to prosecute anew his claims upon the United States, and died there in the same year; and your committee have reason to believe his death was hastened by the wounds he received while in the line of his duty, in the service of the United States in the revolutionary war. It appears by the certificates of the keeper of the parish register of the parish of St. Jean, Dorchester, in Lower Canada, that the widow of the said Peter Charlant died and was buried in said parish on the 12th day of March, 1838; and that Jacques Charlant, who is a resident of the same parish, is the only surviving child of the said Peter Charlant, and heir now living, and who provided for his invalid father a great number of years, is now himself aged and infirm, and needy.

The committee are therefore of the opinion that the sum of $200, the balance struck and certified by the judges as due to the said Peter Charlant in May, 1792, when he presented his claim for adjustment, is a just and legal claim against the United States, and ought to be

paid, with the interest from the time the said balance was struck, to the personal or legal representatives of the said Peter Charlant. Also, that the pension the said Charlant was entitled to, had this claim then been allowed, ought, in justice and right, to be paid to his orphan child, on whom were thrown the consequences of the injuries his parent received, which disabled him through life, and which injuries were received in the line of his duty while in the service of the United States, in the war of the revolution. It is shown that, at the time the application was made, there was record evidence of the service of the said Charlant, which was not furnished by the officer whose duty it was to examine the muster-rolls; and that he received bounty lands as a during-war's man; and was returned by General Hazen as belonging to his regiment of Canadian refugees. If there were no precedent cases where Congress, in its magnanimity for distinguished services, extended the benefits of the pension to the children of the deceased applicant, where his claim had not been completely established, either from technical objections or omissions, your committee would be inclined, on the high recommendation which the applicant received from the hands of the distinguished jurists who gave it, in this instance to deviate and pass the claim. But they are not without precedent.—(See United States Statutes at Large, vol. 6, page 636, the case of Elizabeth Robison.) In conclusion, the committee recommend the adoption of the prayer of the petitioner, and report a bill accordingly.

D.

THIRTY-FOURTH CONGRESS, FIRST SESSION.—H. R. No. 559.

IN THE HOUSE OF REPRESENTATIVES, *August* 8, 1856.

Read twice, and committed to a Committee of the Whole House.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, reported the following bill:

A BILL for the relief of the heirs of Peter Charlant, a revolutionary soldier.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and required to pay to the surviving children of the said Peter Charlant, deceased, or their legal representatives, the sum of two hundred dollars, as arrears of pay and the half pay of a sergeant, certified by the judges, at the monthly allowance of five dollars, to commence from the thirty-first day of May, seventeen hundred and ninety-two, and continued to the third day of March, anno Domini eighteen hundred and twenty, with interest on the first-named sum; and the sum necessary to carry into effect the above provisions is hereby appropriated.

E.

Letter from Commissioner of Pensions.

PENSION OFFICE, *March* 25, 1859.

SIR: In reply to the inquiries contained in your letter of this date relative to "Peter Charlant," who, it is stated, was a soldier or sergeant of Colonel Hazen's regiment in the war of the revolution, I have to inform you that the records of this office show that land warrant No. 12889, for 100 acres, issued February 20, 1792, to Benjamin More, assignee of Peter *Charlon*, who was a private of Colonel Hazen's regiment, war of the revolution. It further appears on a list of the Canadian and Nova Scotia refugees, to whom bounty lands were granted by the State of New York, that a land patent was granted to a Peter Charlong. On a full examination of the books of final settlement with the soldiers of Colonel Hazen's regiment, it does not appear that a certificate of a gratuity of $80 ever issued to Peter Charlon or Charlong.

Very respectfully,

GEORGE C. WHITING,
Commissioner.

C. K. AVERILL, Esq., *Present.*

F.

Affidavit of C. K. Averill.

IN THE COURT OF CLAIMS.

JACQUES CHARLANT *vs.* THE UNITED STATES.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

On this 31st day of March, A. D. 1859, personally came before me, the undersigned, justice of the peace in and for said District, Calvin K. Averill, of Rouse's Point, in the town of Champlain, Clinton county, New York, to me known to be a person of credibility, who, being duly sworn, doth depose and say: That he knew well by repute, Peter Charlant, who died in Champlain a short time previous to his (deponent) going there to practice law, in 1822, and his remains were interred at Lacadie, in Canada. That deponent is well acquainted with his son, Jacques Charlant, who is a resident of St. Anthenos, opposite to St. John's, and is the only child now living of the said Peter Charlant, who was a reputed soldier or sergeant of Colonel Hazen's regiment in the revolutionary war, and a resident of St. John's, in Canada, when he joined the American army. That deponent has examined the records and place of burial, and it appears that he died on the 3d day of March, 1820, and the records also show the death of

his widow and the births and deaths of all his children, except Jacques Charlant, the claimant; and deponent further saith that he is as well known by the name of Charlong as Charlant; and that by the laws of New York he received bounty lands for his revolutionary services in the same county and State where he died, and that by the laws of New York the said Jacques Charlant as the only survivor would be entitled to the preference of administration if any were needed. And further deponent saith not.

C. K. AVERILL.

Sworn and subscribed before me the day and year above written.

C. W. C. DUNNINGTON, *J. P.*

To be read in evidence.

JNO. D. McPHERSON, *Deputy Solicitor.*

IN THE COURT OF CLAIMS.

PETER CHARLANT'S REPRESENTATIVE *vs.* THE UNITED STATES.

Evidence offered by the United States.

Two resolutions of the House of Representatives and extracts from the reports of the Secretary of War, showing how this case came before Congress.

JNO. D. McPHERSON, *Deputy Solicitor.*

Resolution of the House of Representatives, December 3, 1792.

[Extracted from reprinted Journals, vol. 1, p. 631.]

Resolved, That the Secretary of War be directed to lay before this House a list of the names of the persons returned to his office for pensions by the circuit courts, in pursuance of the act entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions," together with the rates of the said pensions, and the causes assigned for disability, accompanied with a statement of such facts and circumstances as may relate thereto.

Reply of the Secretary of War.

[Extracted from American State Papers, title "Claims," page 56.]

WAR DEPARTMENT, *December* 14, 1792.

In obedience to the order of the House of Representatives of the 3d instant, the Secretary of War respectfully submits two lists of names

which have been transmitted by the judges of the circuit courts (in the capacity of commissioners) of the districts of New Hampshire, Massachusetts, Rhode Island, Connecticut, and New Jersey, and also by the judges of the district of Maine.

The first list, marked A, contains the names of eighty-five persons, who were examined by the circuit courts in the months of April and May last, and who have been actually placed upon the pension list, together with the names of three persons who have been withheld from the said list on account of their having been found as deserters, upon examination of the muster-rolls of the corps to which they belonged, in the late war.

And also the name of Peter Charlont, a Canadian refugee, who is recommended "to the notice and benevolence of Congress." The documents on which this recommendation is founded are herewith submitted, marked No. 1.

The second list, marked B, contains the names of one hundred and sixteen persons examined by the judges of the circuit courts in the months of September and October last. This list is under examination with the muster-rolls and documents of the late war, in order to ascertain the proofs of the services alleged; but in many cases no proof of service can be traced, owing to the imperfection or entire deficiency of the muster-rolls, or other evidences of the early part of the war.

* * * * * * * *

It may be observed that several volunteers and one commissary have been stated for pension; but as persons of this description do not appear by any of the former resolves of Congress to have been explicitly named for pensions, these cases are submitted to the view and decision of Congress in paper No. 2.

* * * * * * * *

All of which is humbly submitted to the House of Representatives.

H. KNOX, *Secretary of War.*

A.—*List of invalid pensioners returned by the circuit court for the hereafter named districts, and who have been placed on the list transmitted from the War Office to the commissioners of loans for the respective States, and returned to the Secretary of the Treasury for arrearages of pensions.*

* * * * * * * *
* * * * * * * *
* * * * * * * *

B.—*List of invalid pensioners examined by the judges of the circuit court of the United States for the district of Massachusetts, October term,* 1792.

* * * * * * * *

List of invalid pensioners examined by the judges of the circuit court of the United States for the district of Connecticut, October term, 1792.

* * * * * * * *

[No.] 79, [name] Joseph Witter, [rank] lieutenant, [regiment] volunteers, [disability] wounded by four musket balls, &c., [date of certificate] October 4, 1792, [monthly allowance] $10, [arrears] $120.

* * * * * * * *

N. B.—In the certificate of Joseph Witter the following proviso is made: *Provided, nevertheless,* That as he was a volunteer, if that be properly chargeable over to the United States, then he should be placed on the pension list, and ought to receive the sums aforesaid; otherwise not.

List of invalid pensioners examined by the judges of the circuit court of the United States for the district of New Jersey, October, 1792.

[No.] [name] John Hodge, [rank] captain, [regiment] volunteers, [disability] badly wounded in both of his hands by the explosion of powder, [date of certificate] September 5, 1792, [monthly allowance] $3 33⅓, [arrears] $120.

* * * * * * * *

[No. 1, being "certificate of the judges of the circuit court of the United States for the district of Massachusetts in favor of Peter Charlont," is printed above in report 330 of Committee on Revolutionary Pensions, by Mr. Miller.]

No. 2.—*Documents in support of the claim of Captain John Hodge.*

[This certificate of the judges for the New Jersey district states that J. Hodge, in 1776, "as a volunteer in the service of the United States," assisted the United States troops in firing upon the enemy, and in so doing was wounded by an explosion of powder. They "are, therefore, of opinion that he ought to be placed on the pension list," at an annual allowance of $40, and receive $120 for arrears.]

Resolution of the House of Representatives, of March 5, 1794.

[Extracted from reprinted Journals, vol. 2, p. 83.]

Resolved, That the Secretary of War be directed to make a report of the cases of all claimants to be placed on the pension list of the United States who have obtained certificates from the circuit courts, signed as commissioners, or from the district judge of the court of Maine, for the purpose that Congress may place on the pension list those claimants where cases come clearly within the description of the law.

Reply of the Secretary of War.

[Extracted from American State Papers, "Claims," p. 107.]

WAR DEPARTMENT, *April* 25, 1794.

The Secretary of War, in obedience to the order of the House Representatives of the 5th of March last, respectfully reports:

A statement of the cases of all claimants to be placed on the pension list of the United States who have obtained certificates from the circuit courts signed as commissioners, and also from the judge of the court of Maine. The remarks will exhibit, as far as the same can be ascertained from the documents in the public offices, the circumstances attending each case.

The certificates of the commissioners and certain affidavits which were presented to them are now also submitted.

The present statement contains some additional cases, which were received subsequent to the list submitted to Congress the 14th of December, 1792.

All of which is respectfully submitted to the House of Representatives.

H. KNOX, *Secretary of War.*

[An extract from the "list of certificates," page 109, containing all that refers to this case, is printed above in report 330 of the Committee on Revolutionary Pensions, by Mr. Miller.]

IN THE COURT OF CLAIMS.

PETER CHARLANT'S REPRESENTATIVE *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for an invalid pension, alleged to have been due and payable to Charlant in his lifetime.

AVERMENTS IN THE PETITION.

That the petitioner, Jacques Charlant, is the only surviving child and only heir-at-law of Peter Charlant, deceased.

2. That Peter Charlant was a sergeant in General Hazen's regiment, and served to the close of the revolutionary war.

3. That Peter Charlant had a claim against the United States for services during the revolutionary war.

4. That he also had a claim for wounds received during that war; one in the hand, one in the body, and another in the forehead, by which he lost his left eye.

5. That his claim was adjudicated to him by the judges of the circuit court in Massachusetts, under the act of March 3, 1792.

6. That he died on the 3d of March, 1820, without having obtained either his claim or a pension.

7. It is not stated under what pension law the claim was made, but it is supposed to rest exclusively upon the act of 1792.

MATERIAL FACTS SHOWN IN THE RECORD AS UNDERSTOOD BY THE SOLICITOR.

1. Peter Charlant was a Canadian refugee and a private in Colonel Hazen's regiment in the war of the revolution. (*Whiting's letter, R., p.* 9.)

2. There is no proof of the amount due Charlant, or of his wounds and disabilities.

3. On the 26th of August, 1776, an invalid pension law was passed, granting pensions to those wounded in any engagement so as to be incapable of serving. (1, Old Journal, 454.)

On the 25th of September, 1778, Congress passed the following:

"*Resolved*, That all provisions and regulations contained in the said resolve of the 26th of August, 1776, shall extend to all persons who lost a limb or were otherwise disabled as aforesaid in the service of the United Colonies or States of America, before the 26th of August and since the commencement of hostilities on the 19th of April, 1775." (3, Old Journal, 69.)

But neither of these acts covers Charlant's case.

4. That on the 23d of March, 1792, Congress passed a law on the subject of invalid claims, the second and fourth sections of which are as follows:

CHAP. XI. An act to provide for the settlement of the claims of widows and orphans, barred by the limitations heretofore established, and to regulate the claims to invalid pensions.

* * * * * * * * *

SEC. 2. *And be it further enacted*, That any commissioned officer, not having received the commutation of half pay, and any non-commissioned officer, soldier, or seaman, disabled in the actual service of the United States during the late war, by wounds or other known cause, who did not desert from the said service, shall be entitled to be placed on the pension list of the United States during life, or the continuance of such disability, and shall also be allowed such further sum for the arrears of pension, from the time of such disability, not exceeding the rate of the annual allowance in consequence of his disability, as the circuit court of the district, in which they respectively reside, may think just: *Provided*, That in every such case the rules and regulations following shall be complied with; that is to say: First. Every applicant shall attend the court in person, except where it shall be certified by two magistrates that he is unable to do so, and shall produce to the circuit court the following proofs, to wit: A certificate from the commanding officer of the ship, regiment, corps, or company in which he served, setting forth his disability, and that he was thus disabled while in the service of the United States; or the affidavits of two credible witnesses to the same effect. The affidavits of three reputable freeholders of the city, town, or county in which he resides, ascertaining, of their own knowledge, the mode of life, employment, labor, or means of support, of such applicant, for the last twelve months. Secondly. The circuit court, upon receipt of the proofs aforesaid, shall forthwith proceed to examine into the nature of the wound or other cause of disability of such applicant, and, having ascertained the degree thereof, shall certify the same, and transmit the result of their inquiry, in case, in their opinion, the applicant should be put upon the pension list, to the Secretary of War, together with their opinion, in writing, what proportion of the monthly pay

such applicant will be equivalent to the degree of disability ascertained in manner aforesaid.

* * * * * * * * *

SEC. 4. *And be it further enacted*, That the Secretary of War, upon receipt of the proofs, certificate, and opinion, aforesaid, shall cause the same to be duly filed in his office, and place the name of such applicant on the pension list of the United States, in conformity thereto: *Provided, always*, That in any case where the said Secretary shall have cause to suspect imposition or mistake, he shall have power to withhold the name of such applicant from the pension list, and make report of the same to Congress at their next session.

* * * * * * * * *

(1 U. S. L., p. 244.)

5. While this law was in force, Charlant applied to the judges of the circuit court in Massachusetts, who made a certificate in his favor, but not in conformity with the statute, nor did it declare that he was entitled to the sum claimed as arrears, or the pension which he had asked for. (R., pp. 6, 7.)

6. The Secretary of War did not treat the report of the judges as deciding that Charlant was legally entitled to what they recommended Congress to provide for him. (R., p. 11.)

7. On the 28th of February, 1793, the act of 1792, above recited, was repealed, and new rules and regulations provided in relation to the granting of invalid pensions. (1 U. S. L., p. 324.)

8. There is no evidence that Charlant ever applied to the proper department to obtain the amount claimed to be due him, or a pension as an invalid.

9. There is no proof showing that Charlant was entitled to money or an invalid pension under the laws of the old or the constitutional Congress.

10. That Charlant died in 1820.

LEGAL PROPOSITIONS.

FIRST. *The plaintiff can claim nothing without proof.*

The plaintiff, in this case, seems not to believe that proof of services and disability are essential to obtain the pension which is claimed. No proof is offered to sustain either part of the claim. It seems to be supposed that the proof of these facts is to be inferred from the proof of other facts found in the record. This is wholly inadmissible. Mere inferences from other facts cannot be admitted to prove other substantive facts. In cases in this court, facts to sustain claims must be proved and not inferred from other proved facts. In this case there is no proof of either of the facts set up in the petition as to amount due for arrears or disability.

SECOND. *There is no proof that Charlant was entitled to any claim or pension from anything found in the record.*

The facts proved or offered in evidence, if conceded to be true, do not show that Charlant was entitled to a pension or arrears from the

United States. All that is established by legal or competent evidence is the fact that he was a Canadian refugee, and served in our army under Colonel Hazen. There is no evidence of the commencement or termination of the service, and none of disability or of his identity. It follows that there is no evidence in this case establishing the claim now set up.

THIRD. *The paper signed by John Jay and John Lowell is not evidence of rights of Charlant to anything now claimed.*

The present petition claims the sum of two hundred dollars as arrears of pension due in 1792, and a pension from that time to 1820, when Charlant died. The paper signed by Jay and Lowell does not prove the right to either for three reasons:

First. It was not made in conformity with the act of 1792. The act specifies what proof shall be made. It must be the certificate of a commissioned officer, "or the affidavits of two credible witnesses." It does not appear that either of these were produced.

Second. The act required him to produce the affidavits of three reputable freeholders of the city, town, or county in which he resides, ascertaining, of their own knowledge, the mode of life, employment, labor or means of support of such applicant for the last twelve months."

This requirement of the act was not, as is expressly stated in the certificate, complied with.

Third. The law required the judges to certify their opinion to that effect if the applicant was entitled to a pension. This was not done.

The judges do not say that the applicant was entitled to a pension under the law. They say: "We really think he ought to be provided for. He is now poor and much distressed, and we warmly recommend him to the notice and benevolence of Congress." (R., p. 7.)

The paper, not conforming to the requirements of the statute, is not evidence of anything.

FOURTH. *The judges in making the certificate appear to have acted as commissioners and not as judges, and therefore the act was not a judicial proceeding; but if they acted as a court, the law under which they acted was unconstitutional and void.*

The authority under which the judges acted was conferred upon them as a circuit court, but it appears that they acted as commissioners out of court. In neither case were the duties judicial. The Supreme Court has decided that such duties are not judicial. In *The United States* vs. *Ferriera*, (13 How., 40,) the question was, whether the district judge of Florida, in passing upon certain claims against the United States, acted judicially or as a commissioner. The court held that he acted in the latter capacity, and that an appeal from his decision would not lie to the Supreme Court.

In *The United States* vs. *Gale Todd*, (13 Howard, 52, in a note by the Chief Justice,) the question arose under the law now in question. It was held that the judges acted simply as commissioners and not as a court. Many of the judges of the Supreme Court had refused to act under the law because the duties imposed were not judicial. The

Chief Justice gives the substance of the conclusions then arrived at as follows:

"1. That the power proposed to be conferred on the circuit courts of the United States by the act of 1792 was not judicial power within the meaning of the Constitution; and was, therefore, unconstitutional, and could not lawfully be exercised by the courts.

"2. That as the act of Congress intended to confer the power on the courts as a judicial function, it could not be construed as an authority to the judges composing the court to exercise the power out of court in the character of commissioners.

"3. That money paid under a certificate from persons not authorized by law to give it might be recovered back by the United States."

This decision shows that these certificates were unauthorized, because the law under which they were issued was unconstitutional and void. If the present certificate had been in conformity with the act, it would be a perfect nullity. The judges have no power to make it as a court, nor any as commissioners out of court.

FIFTH. *The judges' certificate can have no effect, because the law under which it was made has been repealed.*

On the 28th of February, 1793, the second, third, and fourth sections of the act of 1792 were expressly repealed. (1 U. S. L., 324.) No pension could be allowed under the act after the law under which it was claimed had been repealed. Pension laws can be repealed, and pensions can be taken away after they have been granted. This has been the uniform construction. Congress, by the act of 1792, proposed to give gratuities to certain classes of persons. There was no contract between the government and such persons, and Congress could withhold them when it chose so to do.

SIXTH. *The claim to an invalid pension dies with the person, and cannot be claimed by a representative.*

Invalid pensions are granted solely upon the ground that the pensioner has been disabled and cannot earn his living. If the applicant dies before obtaining a pension, the reason for granting it fails. This point was decided by Attorney General Cushing in the case of Oo-La-Ya-Tah. (7 Op., 619.) This case arose under a treaty with the Cherokees promising pensions to those warriors who had been wounded in the war with Great Britain, which were to commence from the period of disability. Application was made for a pension, but before it was finally acted upon the applicant died. His representative applied for the amount which the invalid might have received if his application had been acted upon before his death. The decision was, that it could not be lawfully paid to the representative. That decision must control this case. The present petitioner is not entitled to receive anything, either as heir or administrator. There is no provision of law authorizing him to receive in either capacity.

R. H. GILLET, *Solicitor.*

Dated January 21, 1860.

IN THE COURT OF CLAIMS.

April 30, *A. D.* 1860.

PETER CHARLANT'S SURVIVING CHILD AND HEIR-AT-LAW (JACQUES CHARLANT) *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner claims to be entitled, as the surviving child and heir-at-law of Peter Charlant, deceased, to the arrears of a pension which he alleges was due to his father "for services and wounds received in the revolutionary war."

Under the act of Congress approved March 23, A. D. 1792, (1 Stat. at L., p. 244, ch. 11,) Peter Charlant presented a petition to the judges of the circuit court of the United States for the district of Massachusetts, stating that he was, at the commencement of the revolutionary war, a volunteer in the service of the United States, and continued in that service in various characters till he was wounded and taken prisoner by the enemy; and after his return, again engaged in that service, and was disabled therein. The judges, in their certificate to the Secretary of War, state that Peter Charlant personally appeared before them, and it appeared that he was a native of Canada, and attached himself to the American cause early in the war; that from the time the American forces were in Canada until the conclusion of the war he was frequently engaged in the service of the United States, at certain times leading numbers of Canadians to attack the enemy, at others as a volunteer with the troops of the United States; that for some time he appears to have been attached to the corps under the command of General Hazen, but in what rank did not clearly appear to them; that in the service of the United States he was employed to carry letters to and from Canada, and on one of these errands he was wounded by a party of the enemy, and disabled by having a ball pass into his body, another through his left hand, and by a third his skull was fractured, and was deprived of the use of his left eye, by which wounds he had been very much disabled from procuring his livelihood by labor, which appears to have been his usual employment. They further certify as follows:

"This disability is satisfactorily proved to the commissioners, and that it happened while in the service of the United States; but as he is not an inhabitant within the United States, he has not procured any certificate from the freeholders of the town, city, county, or parish where he lives, nor can such probably be procured.

"We have considered him as entitled (if within the intention of the act) to the half pay of sergeant, and to two hundred dollars as arrears of pay. He appears to have been allowed, while on one of his journeys in the service of the United States, by order of the Secretary of War, one ration and a half. We really think he ought to be provided for. He is now poor and much distressed, and we warmly recommend him to the notice and benevolence of Congress."

The case of Peter Charlant was presented to Congress, in a repor

made by the Secretary of War, on the 14th day of December, A. D. 1792, as one which had been transmitted to his department by the judges of the circuit court of Massachusetts, and was based on their certificate. In this report the Secretary of War mentions Peter Charlant as a Canadian refugee, who was recommended by the judges "to the notice and benevolence of Congress," and refers to their certificate as the document on which their recommendation was founded.

The petitioner offers no further evidence in support of his claim.

It is apparent on the face of the certificate of the judges, not only that the case of Peter Charlant, as presented by it, was not within the provisions of the act of March 3, A. D. 1792, but that they did not consider it as coming within that act. They could take cognizance only of the cases of applicants residing within their district: the language of the act is, "the circuit court of the district in which they respectively reside." Instead, therefore, of certifying, as they were required to do if the case had come within the provisions of the act, that, "in their opinion, the applicant should be put on the pension list," they said: "We have considered him as entitled (if within the intention of the act)" and "warmly recommend him to the notice and benevolence of Congress." They made no "adjudication under the act" that Peter Charlant should be put on the pension list, or that he was entitled to a pension. The consequence was, that the Secretary of War could not, and did not, place his name on the pension list.

Subsequently Congress passed the act approved February 28, A. D. 1793; but that act also provided only for the cases of persons residing within some judicial district of the United States. It had no application, therefore, to the present case.

The resolution of August 26, A. D. 1776, applies only to commissioned officers, non-commissioned officers, and soldiers of the army, and to commanders, commissioned officers, warrant officers, marines, and seamen of the navy; but it does not appear, even from the certificate of the judges, that Peter Charlant was any one of these. The judges certify that he was a native of Canada, and attached himself to the American cause early in the war; and that from the time the American forces were in Canada until the conclusion of the war he was frequently engaged in the service of the United States, at certain times leading numbers of Canadians to attack the enemy, at others as a volunteer with the troops of the United States; but they do not state that he was in the army of the United States when thus engaged in their service. The fair inference from their statement is that he was occasionally, not regularly, engaged in such service. They state that he appeared to have been, *for some time*, attached to the corps under the command of General Hazen, but *how long* he was attached to that corps they do not state; nor did it appear to them in what rank he was attached to that corps. But when he was disabled, they certify, he was in the service of the United States, "employed to carry letters to and from Canada," and actually engaged on one of these errands. The just inference from this statement is, that he was not then either an officer or soldier of the army, but a mere messenger employed for a special purpose. Hence the judges say: "We have

considered him as entitled (if within the intention of the act) to the half pay of a sergeant;" but they do not say, and could not say, that he was a sergeant. They plainly meant to assimilate his services to those of a sergeant, and "warmly recommend him to the notice and benevolence of Congress," not to *adjudicate* that he was a person to whom a pension, *ex debito justitiæ*, was due, and whose name should be placed on the pension list by the Secretary of War.

The resolution of September 25, A. D. 1778, (3 Journals of Congress, 68,) which was designed both to extend and to explain the resolution of August 26, A. D. 1776, does not contemplate any other persons than those who belong to or resided in one of the United States, as entitled to the benefits of the latter resolution. If this is to be regarded as an authoritative or as a correct exposition of the resolution of August 26, A. D. 1776, then, as Peter Charlant did not belong to or reside in any of the United States, he was clearly not entitled to a pension under that resolution. But even if this is not to be regarded either as an authoritative or as a correct exposition of the resolution of August 26, A. D. 1776, prior to September 25, A. D. 1778, still the resolution of the latter date must have that effect at least from the time of its passage. And as it does not appear from the certificate of the judges, or otherwise, *when* Peter Charlant was disabled, whether before or after September 25, A. D. 1778, it cannot be affirmed that he thereby became entitled to a pension under the resolution of August 26, A. D. 1776.

But even if Peter Charlant was entitled to a pension under the resolution of August 26, A. D. 1776, as is now claimed for him, still he had not applied therefor on the 11th day of June, A. D. 1788, and did not make such application within six months thereafter, and consequently his claim was barred by the resolution of that date, (4 Journals of Cong., 821.) And as the act of March 23, A. D. 1792, did not apply to his case, and no other act since passed is applicable to it, the bar still continues.

It is plain, we think, that it has not been shown to us that Peter Charlant was entitled to a pension, (1) because his case was not embraced by the act of March 23, A. D. 1792, and the certificate of the judges cannot, for that reason, be received as evidence of the matters of fact stated in it; (2) because, even if that certificate be admissible as evidence of the matters of fact stated in it, still it does not show that Peter Charlant at any time belonged to, or resided in, any of the United States, or at what time he was disabled, or that when he was disabled he was an officer or soldier in the army of the United States; and (4) because, if he ever was entitled to a pension under the resolution of August 26, A. D. 1776, his claim was barred by the resolution of the 11th day of June, A. D. 1788, and has never been revived.

Peter Charlant, at least after the action of the judges on his case, must be presumed to have understood its character, and to have been well aware that he was entitled to nothing as of right, and that his only claim was upon the mere grace and favor of Congress. It must be presumed also that he could not have made his case either better or stronger than he made it before the judges. We are thus enabled to account for the fact that though he lived more than a quarter of a

century after his case was reported to Congress, yet he made no further application for relief to any department or officer of the government. Indeed, so entirely had all recollection of his claim escaped even from his own family, that more than sixty years from the time he went before the judges had elapsed before it was again presented. Such long continued silence, under such circumstances, raises a very strong presumption against the justice of the claim.

Our opinion is, that the petitioner is not entitled to relief.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 265.

SELMAR SIEBERT.

[To accompany Bill H. R. C. C. No. 104.]

DECEMBER 18, 1860.—Reported from the Court of Claims, and, together with the accompanying bill, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

SELMAR SIEBERT vs. THE UNITED STATES.

1. The petition of the claimant and amended petition.
2. Evidence of claimant transmitted to the House of Representatives.
3. Evidence of the United States transmitted to the House of Representatives.
4. Claimant's brief.
5. United States solicitor's brief.
6. Opinion of the court allowing claimant seven hundred and thirty-one dollars and eighty-one cents, with interest at the rate of six per cent. from the 11th day of April, 1856.
7. Opinion of Judge Loring dissenting from the court allowing interest.
8. Bill for relief of claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT, claimant, *vs.* THE UNITED STATES.

PETITION.

To the honorable the judges of the Court of Claims:

Your petitioner most respectfully represents that he is a citizen of the United States, and a resident of the District of Columbia; that heretofore, to wit, on the 21st day of August, anno Domini, 1854, your petitioner entered into a certain contract with one Thomas J.

Lee, a captain of the United States topographical engineers, who then acted for and in behalf of the War Department, one of the executive departments of the government of the United States, (which contract is hereto annexed as exhibit A,) by which contract your petitioner agreed to engrave on copper a chart of the Straits of Mackinac, at certain fixed rates of remuneration, stipulated for and agreed to by both parties to said contract; that it was understood that the original drawing of said Straits of Mackinac, of which drawing the engraved chart thereof was intended to be a copy, was to be furnished to your petitioner by the War Department, through said Captain Thomas J. Lee. And your petitioner further represents that, owing to some vital inaccuracies in the original drawing of the chart "Straits of Mackinac," as delivered to the claimant, it was, upon request, returned to the said Captain Lee, acting as aforesaid for and on behalf of the War Department, for correction, and was not returned by him until shortly before the 1st day of April, A. D. 1855, accompanied with a verbal order to delay the engraving until further orders, which further orders were not received until some time in the month of August of the same year, whereby, as well as by mutual consent then and at that time fully expressed, so much of paragraph one of the foregoing contract as stipulates the day and date, to wit, the first day of April, A. D. one thousand eight hundred and fifty-five, for the delivery of the proof impression of the said chart "Straits of Mackinac" to said Captain Thomas J. Lee by claimant, was abrogated.

And your petitioner further represents that some time during the early part of the year of our Lord 1856, and at the special request of the War Department, the copper plate on which the said chart of the Straits of Mackinac were engraved, in strict conformity to the corrected original drawing furnished to your petitioner by the War Department, was completed, delivered up to, and accepted by Lieutenant M. L. Smith, of the topographical engineers, who succeeded the aforementioned Captain Thomas J. Lee in charge of the office.

And your petitioner further represents that thereafter, to wit, on or about the 22d day of May, A. D. 1856, he presented at the office of the said Lieutenant M. L. Smith for payment his account for said work and labor done and materials furnished, according to the fixed rates stipulated and agreed to by him in said contract, (a true copy of which account is hereto annexed as exhibit B,) amounting to one thousand seven hundred and sixty-four dollars and seventy-five cents. And your petitioner further represents that the said Lieutenant M. L. Smith, by authority, and acting under the orders to him of the War Department, offered to pay, and did pay, to your petitioner only the sum of one thousand and thirty-two dollars and ninety-two cents, and refusing to pay the balance of seven hundred and thirty-one dollars and eighty-three cents, justly due your petitioner, according to the stipulations of said contract. And your petitioner, at the time of receiving said amount of one thousand and thirty-two dollars and ninety-two cents, protested against the action of the War Department in the premises.

And your petitioner further represents that the above sum of seven hundred and thirty-one dollars and eighty-three cents is still justly due him from the government of the United States, and prays that this

his claim may be adjudicated by your honorable court. Your petitioner is the sole owner of the claim presented.

A. V. HOFER,
Of Counsel for Claimant.

Personally appeared Selmar Siebert before me, a justice of the peace, who, being duly sworn, says that the facts set forth in the above petition are true, to the best of his knowledge.

SELMAR SIEBERT.

Sworn to and subscribed before me this 9th day of June, A. D. 1857.

CHARLES WALTER, *J. P.*

EXHIBIT A.

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac at the following rates, viz:

Copper plate - - - - - - - -	$56 00
Engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes - - - - - - - -	1,150 00
Sailing directions, at $1 50 per one hundred letters, of whatever kind.	
Printing, per hundred copies - - - - - -	12 00
Paper, per hundred copies - - - - - -	10 00

Subject to the following conditions, viz: first, a proof impression, in every respect corresponding to the drawing and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile bay; of sanding to Coast Survey sheet No. 2 of Long Island sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the 1st day of April, 1855; and if necessary, you are to wait one month before the final corrections to the proof are made.

Second. That the plate is to be capable of yielding three thousand fair impressions.

Third. That I do not engage to have any certain number of impressions taken beyond three hundred, but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

Fourth. That I am to be the judge of the quality of the work and of the paper and printing.

Fifth. That all additions and corrections other than those caused by your own fault or neglect will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection; the day's work to be estimated at $6.

Sixth. After the final corrections are made, the engraving approved by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOS. J. LEE,
Captain Topographical Engineers.

Mr. SELMAR SIEBERT.

WASHINGTON, *August* 21, 1854.

I accept the above conditions.

SELMAR SIEBERT.

EXHIBIT B.

Lieutenant M. L. Smith, Topographical Bureau, to Selmar Siebert.

For engraving chart of Straits of Mackinac - - -	$1,150 00
Copper plate - - - - - - -	56 00
Taking out the degrees and retouching the work thereby spoiled - - - - - - - -	350 00
Additional work and alterations - - - - -	100 00
Letters on sailing directions and notes, 6,600, at $1 50 per 100 letters - - - - - - -	99 00
Additional letters, 650 - - - - - -	9 75
	1,764 75

WASHINGTON CITY, *April* 2, 1856.

No. 1.

UNITED STATES COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Amended petition.

Selmar Siebert, the plaintiff in the above suit, respectfully asks to amend his petition, heretofore filed, in this: That he claims interest upon the amount set out therein as due to him by the defendant, under and by virtue of his contract with Captain T. J. Lee, acting on the part of said defendant, to engrave the plate of the chart of the Straits of Mackinac, &c.; and he further claims that he is entitled to and should be compensated by the said defendant for the damages immediate and consequent to which he was subjected, because of the breach

of and non-fulfilment by the defendant of the said contract. These immediate and consequential damages the plaintiff alleges amount to thirty-two hundred and twenty dollars, and include his (the plaintiff's) loss of time in efforts to obtain, on the part of the agents of the defendant, the fulfilment of the provisions of the contract; also loss incurred in payment of interest upon money which the plaintiff was forced to raise to carry on his business, because of the delay and refusal of the defendant to pay him the amount of money justly due to him by virtue of said contract; also for money necessarily expended by the plaintiff in the employment of counsel and others to aid him in his efforts to obtain his just rights under said contract from the defendant before commencing the pending suit in your honorable court; also for money and expense incurred in counsel fees and taking of testimony since the entering of said suit; also for the pecuniary loss arising from the printing of the said chart of the Straits of Mackinac having by the said defendant been taken from the plaintiff and given to another person; and also for the damage to the professional reputation and character of the plaintiff, and injury to his business as an artist, consequent upon the refusal of the defendant to comply with the obligations and conditions of said contract. Therefore the plaintiff asks that the above-mentioned sum of thirty-two hundred and twenty dollars, claim for damages for the breach of contract on the part of the defendant, may be added to his claim, as set out in the "exhibit" thereof attached to his original petition. And he will ever pray, &c.

SELMAR SIEBERT.

Selmar Siebert, being duly sworn according to law, says that the facts set forth in the above petition are true so far as they come within his own knowledge, and so far as that knowledge is derived from others he believes them to be true.

EDMUND F. BROWN,
Commissioner Court of Claims.

WASHINGTON, *April* 24, 1858.

No. 2.

COURT OF CLAIMS, JUNE, 1857.—No. 1472.

SIEBERT *vs.* THE UNITED STATES.

Depositions of Wellington Williams and J. H. Young.

Depositions of witnesses produced, sworn, and examined on the first day of March, in the year of our Lord one thousand eight hundred and fifty-eight, before Samuel C. Perkins, of the city of Philadelphia, State of Pennsylvania, one of the commissioners appointed by the Court of Claims to take testimony to be used in the investigation of claims against the United States before said court, at his office, No. 627 Walnut street, near Seventh street, in the said city, at four o'clock

in the afternoon of said day, to be used in the investigation of a claim against the United States now pending in the said court in the name of —— Siebert. James H. Young is produced as a witness upon the part of the above claimant, and the said James H. Young, being duly sworn, deposes and says: My name is James H. Young; I am an engraver; I am sixty-five years of age; I have resided for the past year in Girard avenue, above Twelfth, in the twentieth ward of the city of Philadelphia; I have no interest, direct or indirect—none whatever—in the claim which is the subject of inquiry; I am not related to the claimant in any degree whatever.

Question. Have you examined the chart of the Straits of Mackinac hereto annexed, and marked by the commissioner exhibit A? If yea, state the value of the work bestowed upon the same, and the character of the workmanship.

Answer. I have examined the said chart minutely; the workmanship is good, of high character; the work is good. This kind of chart has not been engraved in this country to any extent except in the Coast Survey office. There is a great deal of work upon such kind of charts, and they would cost a great deal more than map engravers, upon the usual style of work, would at first suppose. I should say that the engraver's work upon this chart, just as I see it, would be worth at least twelve hundred or fifteen hundred dollars.

Question. Do you know of any other matter relative to the claim in question? If yea, state it.

Answer. I know nothing of any other matter relative to the claim in question, except that Mr. Siebert called on me some four or five months ago and requested my opinion as to the value of the whole work upon the chart, including certain erasures and alterations which he pointed out to me as having been made by him upon the work; but my opinion as to the value of the work as expressed in the preceding answer is exclusive entirely of any alterations or erasures. For these there would be a further charge depending upon their character and extent.

JAMES H. YOUNG.

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

On this first day of March, A. D. 1858, personally came James H. Young, the witness above named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the above and foregoing deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of James H. Young, taken at the request of R. K. Scott, esq., attorney for the claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of ——— Siebert. The adverse party was duly notified, as appears by the indorsement upon the original notice hereto annexed, marked exhibit B, did not attend, and did not object.

SAMUEL C. PERKINS,
Commissioner.

Wellington Williams, a witness produced, sworn, and examined upon the part of the claimant, deposes and says: My name is Wellington Williams; my occupation is that of map engraver; I am forty-two years old; I have resided for the past year in Germantown, in the twenty-second ward of the city of Philadelphia; I have no interest, direct or indirect—none whatever—in the claim which is the subject of inquiry; I am not related to the claimant in any degree.

Question. Have you examined the chart of the Straits of Mackinac hereto annexed, marked by the commissioner exhibit A? If yea, state the value of the work bestowed upon the same, and the character of the workmanship?

Answer. I have examined the said chart with tolerable minuteness; I have understood that a great many alterations were made in this chart, and including these alterations, I should judge the whole work to be worth about eighteen hundred dollars, allowing from two hundred and fifty to three hundred dollars for the alterations; I think the work is equal in character to the best of the kind which is done in Washington. This work is peculiar in its character, as there is very little of it done, except for the government.

Question. Do you know of any other matter relative to the claim in question? If yea, state it.

Answer. I know nothing whatever of any other matter relative to the claim in question.

WELLINGTON WILLIAMS.

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

On this first day of March, A. D. 1858, personally came Wellington Williams, the witness above named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the above and foregoing deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Wellington Williams, taken at the request of R. K. Scott, esq., attorney for the claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of ——— Siebert. The adverse party was duly notified, as appears by the indorsement upon the original notice hereto annexed, marked exhibit B, did not attend, and did not object.

SAM'L C. PERKINS,
Commissioner.

Commissioner's fees for both depositions and postage, $5 50.

COURT OF CLAIMS, JUNE, 1857.—No. 1472.

SIEBERT *vs.* THE UNITED STATES.

WASHINGTON, *February* 9, 1858.

DEAR SIR: Please take notice that under the order to take testimony, made on the 30th of June last, in the above case, the depositions of James H. Young and W. Williams, of Philadelphia, engravers, will be taken on behalf of the plaintiff, before Samuel C. Perkins, esq., commissioner, at his office, in Walnut street, near Seventh street, in the city of Philadelphia, on Monday, March 1, 1858, at 4 o'clock p. m.

Very respectfully, &c.,

R. K. SCOTT,
Attorney for Plaintiff.

J. D. MCPHERSON, Esq., *Solicitor, &c.*

Receipt of notice admitted.

J. D. McPHERSON, *Deputy Solicitor.*

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Testimony of Frederick Courtenay, Henry M. Knight, and Joseph F. Gedney, for claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On this 29th day of March, A. D. eighteen hundred and fifty-eight, personally came Frederick Courtenay, Henry M. Knight, and Joseph F. Gedney, the witnesses within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by the commissioner, and then proposed by him to each of the witnesses respectively; and the answers of each of the witnesses respectively thereto were written down by the commissioner in the presence of each of the said respective witnesses, who then signed each his own respective deposition in the presence of the commissioner.

The adverse party was notified, did not attend, and did not object, as will appear by his waiver hereunto annexed.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witnesses.

Three witnesses, attendance one day each, at $1 50..... $1 50

Commissioner's fees.

Taking ten pages of testimony and exhibits, estimated to contain 2,200 words, at 20 cts. per 100	$4 40
Administering three oaths, at 10 cts	30
	4 70

SIEBERT *vs.* THE UNITED STATES.

MARCH 27, 1856.

DEAR SIR: I called to remind you that in the above case I propose to take depositions on behalf of the complainant on Monday next, at 10 o'clock a. m., before Commissioner Brown, at the corner of Seventh and F streets.

Very truly yours,

R. K. SCOTT.

J. D. MCPHERSON, Esq., *Solicitor, &c.*

Notice accepted. Time waived.

J. D. McPHERSON, *Deputy Solicitor.*

The deposition of Frederick Courtenay, taken at the request of R. K. Scott, esq., counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Frederick Courtenay; my occupation an engraver. My age is twenty-nine years; my residence the past year, Washington city. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

First interrogatory by counsel for claimant. Have you knowledge of the chart of the Straits of Mackinac, engraved on copper by the claimant, for the United States? If so, state your knowledge thereof, and how obtained.

Answer. My knowledge of said plate consists in my having had it in my hands several times, and having worked upon it, and been paid

for said work. I was employed some twenty-five or thirty days in making a part of the alterations on said plate, and in correcting errors which had been made in the original drawing by the draughtsman; also in restoring the work injured or destroyed by those corrections. I received over one hundred dollars for the part of the alterations and corrections which I made. Mr. Siebert and others were also engaged in making alterations in said plate.

Second interrogatory. Were the corrections, alterations, and restoring work on said plate caused by the incorrectness of the original drawing?

Answer. The portion which I did were, and I believe them all to be so, but cannot say certainly.

Third interrogatory. Have you examined and compared the style of the impressions taken from the plate of the Straits of Mackinac, and does it compare in style and finish of topography to the Coast Survey maps mentioned in the contract between the claimant and Captain Lee, a copy of which is exhibited, and hereunto appended, marked A?

Answer. I have examined them, and believe it to be equal in every respect to the style of the maps mentioned.

Fourth interrogatory. Are the charges in the bill appended to said contract (marked exhibit B) correct, and in accordance with the terms of said contract between the claimant and Captain Lee?

Answer. They are.

Fifth interrogatory. What number of fair impressions was the said plate of the Straits of Mackinac capable of giving when it passed out of claimant's possession?

Answer. As nearly as I can judge, I should think said plate was capable of giving three or four thousand fair impressions when it passed out of the hands of claimant, and afterwards it might give as many more of an ordinary character.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not recollect anything.

FREDERICK COURTENAY.

Sworn to and subscribed before me this 29th day of March, A. D. 1858.

EDM. F. BROWN,
Commissioner of the Court of Claims.

EXHIBIT A.

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac, at the following rates, viz:

Copper plate - - - - - - -	$56 00
Engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes - - - - - - -	1,150 00

Sailing directions, at $1 50 per 100 letters of whatever kind.

Printing, per hundred copies - - - - -	$12 00
Paper, per hundred copies - - - - - -	10 00

Subject to the following conditions, viz: 1st, a proof impression, in every respect corresponding to the drawing and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile bay; of sanding to Coast Survey sheet No. 2, of Long Island sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the first day of April, 1855; and if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken beyond three hundred, but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection; the day's work to be estimated at six dollars,

6th. After the final corrections are made, the engraving approved by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOMAS J. LEE,
Captain Topographical Engineers.

Mr. Selmar Siebert.

Washington, *August* 21, 1854.

I accept the above conditions.

SELMAR SIEBERT.

Exhibit B.

Lieutenant M. L. Smith, Topographical Bureau, to Selmar Siebert.

For engraving chart of Straits of Mackinac - -	$1,150 00
Copper plate - - - - - - -	56 00
Taking out the degrees and retouching the work thereby spoiled - - - - - - - -	350 00
Additional work and alterations - - - -	100 00

Letters on sailing directions and notes, 6,600 at $1 50 per 100 letters - - - - - -	$99 00
Additional letters, 650 - - - - - -	9 75
	1,764 75

WASHINGTON CITY, *April* 2, 1856.

The deposition of Henry M. Knight, taken at the request of R. K. Scott, esq., counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Henry M. Knight; my occupation, an engraver; my age is twenty-seven years; my residence the past year, Washington city; I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

1st interrogatory by counsel for claimant. Have you knowledge of the chart of the Straits of Mackinac, engraved on copper by the claimant, for the United States? If so, state your knowledge thereof, and how obtained.

Answer. I obtained my knowledge from having worked upon the plate several times. I made corrections on it, by restoring the work which had been taken out, caused by incorrectness in the drawing which was furnished by the government officers. There were others besides myself engaged in making the alterations in said plate, namely, Mr. Evens, Mr. Siebert, and Mr. Courtenay

2d interrogatory. Were the corrections, alterations, and restoring work on said plate caused by the incorrectness of the original drawing?

Answer. They were.

3d interrogatory. Have you been paid in full by the claimant for your work on said chart?

Answer. I have.

4th interrogatory. Have you examined and compared the style and impressions taken from the plate of the Straits of Mackinac, and does it compare in style and finish of topography to the Coast Survey maps mentioned in the contract between the claimant and Captain Lee, a copy of which is exhibited and hereunto appended, marked A?

Answer. I have worked on the Mobile plate in the Coast Survey office, and believe the style of impressions from the plate of the Straits of Mackinac to be fully equal to it.

5th interrogatory. Are the charges in the bill now shown you, hereto annexed, marked B, reasonable, especially as to the items for taking out degrees and retouching the work thereby spoiled; additional work and alterations; letters on sailing directions, and notes and additional letters?

Answer. I think the charges are all reasonable.

6th interrogatory. Is the quality of the work on the plate of the Straits of Mackinac equal to the Coast Survey chart of Long Island sound, No. 2, and Mobile bay?

Answer. It is fully equal. I did work on Mackinac and Mobile also, and consider the work on one as good as the other, as far as I know.

7th interrogatory. What number of fair impressions was the plate of the Straits of Mackinac capable of giving when it left the claimant's hands?

Answer. I should say three thousand first class impressions.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. Nothing that I recollect at present.

H. M. KNIGHT.

Sworn to and subscribed before me this 29th day of March, A. D. 1858.

EDMUND F. BROWN,
Commissioner of the Court of Claims.

The deposition of Joseph F. Gedney, taken at the request of R. K. Scott, esq., counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Slemar Seibert vs. United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Joseph F. Gedney; my occupation, copper-plate printer; my age is twenty-eight years; my residence the past year, Washington city. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

1st interrogatory by counsel for claimant. How long have you been engaged in the business of copper-plate printing?

Answer. About fourteen years.

2d interrogatory. Have you examined the chart of the Straits of Mackinac, engraved on copper by the claimant?

Answer. I have examined it.

3d interrogatory. How many fair impressions was the said plate of the Straits of Mackinac capable of furnishing?

Answer. I should say four thousand fair impressions might have been taken from said plate, if properly used, judging from the copy now before me, and hereunto annexed, marked "Exhibit C." Sometimes a plate in good condition may be given into the hands of a careless printer, and be much injured by very few impressions. I have seen instances of the kind, one of which was the plate of Lake Erie, which was sent to me, after the plate was supposed to have been much worn, and I printed about six hundred impressions which the office thought compared favorably with the first. The plate of Lake Erie was sent from the Topographical bureau to Mr. McDougal, by whom I was then employed, and I made the six hundred impressions there.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I cannot say that I do.

JOS. F. GEDNEY.

Sworn to and subscribed before me this 29th day of March, A. D. 1858.

EDMUND F. RROWN,
Commissioner of the Court of Claims.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT
vs.
THE UNITED STATES. } *ss:*

Testimony of Wilson M. C. Fairfax for claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On this eighth day of April, A. D. 1858, personally came Wilson M. C. Fairfax, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

EDMUND F. BROWN,
Commissioner of Court of Claims.

Fees of witness.

Attendance 2 days, at $1 50 per day - - - - $3 00

Commissioner's fees.

Four pages of testimony and exhibit, estimated to contain 920 words, at 20 cents per 100 - - - -	$1 84
Serving subpœna, 50 cents; 1 oath, 10 cents - -	60
	2 44

The deposition of Wilson M. C. Fairfax, taken at the request of R. K. Scott, esq., counsel for Selmar Siebert, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. The United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Wilson M. C. Fairfax; my occupation, a draughtsman; my age is fifty-nine years; my residence the past year, Washington city. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

1st interrogatory by the counsel for claimant. Are you engaged in the United States Coast Survey office? If so, how long have you been so employed?

Answer. I have been employed in the United States Coast Survey office upwards of fourteen years.

2d interrogatory. Have you knowledge of the cost of engraving Coast Survey maps, and of maps and charts of that kind generally?

Answer. Yes; I have had some years' experience in it.

3d interrogatory. Have you any knowledge of the chart of the Straits of Mackinac, the plate of which was engraved by the claimant? If so, please state your opinion of the value of said plate?

Answer. I have had said chart before me, and have investigated the value of it; and I estimate it at eighteen hundred dollars, without any alterations, at less prices than Coast Survey work. I cannot estimate the amount of alterations made in said chart.

4th interrogatory. How does the chart of the Straits of Mackinac compare with those of the Coast Survey as to style, finish, and workmanship?

Answer. I should say it compares very well. I think the style of the woods is better, the sanding excellent, and the hills first rate. The lettering is as good as the average of the Coast Survey charts.

5th interrogatory. How does the lettering on the chart of the Straits of Mackinac compare with that on the chart of the Head of Green Bay, which is now exhibited to you, marked "Exhibit A?"

Answer. About the same.

6th interrogatory. Please to state the cost of the Long Island sounds.

No. 3, Coast Survey chart; also the cost of lower part of Delaware river and bay; of Salem harbor map; and of Mobile bay chart.

Answer. The cost is as follows, viz:

Long Island sound, No. 3	$5,505 00
Lower part of Delaware river and bay	2,099 00
Salem harbor, Massachusetts	3,471 00
Mobile bay	3,003 00

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

WILSON M. C. FAIRFAX.

Sworn to and subscribed before me this 8th day of April, A. D. 1858.

EDM. F. BROWN,
Commissioner Court of Claims.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Testimony of Albert A. Boschke, for claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On this thirteenth day of April, A. D. 1858, personally came Albert A. Boschke, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of Witness.

Attendance one day	$1 50

Commissioner's fees.

Taking 4 pages testimony, say 920 words, at 20 cents	$1 84
Serving 2 subpœnas, $1; one oath, 10 cents	1 10
	2 94

The deposition of Albert A. Boschke, taken at the request of R. K. Scott, esq., counsel for Selmar Siebert, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. *The United States:*

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Answer. My name is Albert A. Boschke; my occupation civil engineer in the Coast Survey; my age is thirty-three years; my residence, the past year, Washington city. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

First interrogatory by the counsel for the claimant. Have you any knowledge of the chart of the Straits of Mackinac, engraved by the claimant? if so, state it: especially as to the cause of the taking out of the degrees, and by whose order or direction it was done?

Answer. I have knowledge of that chart; I was the draughtsman of it; it was Mr. Siebert's business to engrave those meridians which were marked on the original drawing, and no more; the others were taken out by the order of Captain Macomb, the officer in charge of the work.

Second interrogatory. Were any, and if any, what, alterations made in the original drawing after it was placed in Mr. Siebert's hands to be engraved, and by whom were such alterations made?

Answer. A considerable portion in the northeast corner of the map was rejected after it was engraved, and substituted from a re-survey. The order to take it out was by Captain Macomb, and to alter it according to the new drawing furnished to Mr. Siebert.

Third interrogatory. Were not the lines of the sailing directions also changed on the plate, because of defect in the original drawing?

Answer. Some of the sailing lines were changed by order of Captain Macomb, but not in defect of the drawing; but after reconsideration of the subject of sailing directions, to obtain a safer route for sailing vessels than was laid down on the drawing first put into the hands of Mr. Siebert.

Fourth interrogatory. Were there as many degrees in the new drawing furnished to Mr. Siebert after the re-survey ordered because of the error in the northeastern corner of the map, as there were in the first drawing?

Answer. To my knowledge and belief no alterations in the degrees have at any time been made upon the drawing.

Fifth interrogatory. After the drawing was furnished to Mr. Siebert did Captain Macomb change the latitude and longitude of the map, and did this cause the changing of the degrees on the plate?

Answer. Captain Macomb did change the latitude and longitude,

and an order was given to Mr. Siebert to make the alterations on the plate, but I cannot recollect the details.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? if you do, state it.

Answer. I do not.

ALBERT A. BOSCHKE.

Sworn to and subscribed before me, this 13th day of April, A. D. 1858.

EDM. F. BROWN,
Commissioner of the Court of Claims.

IN THE COURT OF CLAIMS.

SELMAR SEIBERT *vs.* THE UNITED STATES.

Testimony of Samuel D. O'Brien for claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

On this eighth day of April, A. D. 1858, personally came Samuel D. O'Brien, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

EDM. F. BROWN,
Commissioner of Court of Claims.

Fees of witness.

Attendance 2 days, at $1 50 per day		$3 00

Commissioner's fees.

Four pages testimony, estimated to contain 920 words, at 20 cents per 100	$1 84	
One oath	10	
		1 94

The deposition of Samuel D. O'Brien, taken at the request of R. K. Scott, esq., counsel for the claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Selmar Seibert vs. *The United States.*

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Samuel D. O'Brien; my occupation, a copper-plate printer; my age is forty-three years; my residence the past year, Washington City; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

1st interrogatory by the counsel for the claimant. Was the plate of the Straits of Mackinac sent to you by the claimant, to print some impressions from it?

Answer. It was.

2d interrogatory. Did you print the impressions for him? If so, state what was the condition of the plate at that time.

Answer. I did; and considered that plate in good condition.

3d interrogatory. State whether any officer or other person applied to you for impressions from this plate, while in your possession, and did they obtain them? Please state the name of such officer or person, if you know it.

Answer. I think that Captain Palmer and Captain Smith visited me, and Captain Palmer said he would like to have some impressions, but I do not know that he obtained any. This was in the spring of 1856, as nearly as I can now recollect.

4th interrogatory. Do you know whether Captain Smith or Captain Palmer endeavored to obtain possession of the plate while it was in your hands?

Answer. Captain Smith and Captain Palmer called on me at the time above alluded to, for the purpose of retaining the plate in my hands, but it had been sent away within an hour previously. Captain Smith requested Captain Palmer, who was in charge of the office at that time, should the plate again come into my possession, to have me retain it; whereupon Captain Palmer gave me a verbal order, should the plate come there again to deliver it to no one without a special order from either himself or Captain Smith. I was then in the employment of the Coast Survey office, and was subject to the orders of Captain Palmer.

5th interrogatory. Do you know whether Captain Smith, after he received the said plate, sent it to Mr. Dougal, an engraver in Georgetown, to have additions or alterations made to it?

Answer. I was so informed by the said Mr. Dougal.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

SAML. D. O'BRIEN.

Sworn to and subscribed before me this eighth day of April, A. D. 1858.

EDM. F. BROWN,
Commissioner of the Court of Claims.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Testimony of Henry C. Benner for claimant, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the 17th day of May, A D. 1858, personally came Henry C. Benner, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witness.

Attendance one day	$1 50

Commissioner's fees.

Serving subpœna, 50 cents; oath, 10 cents	60
Five pages of testimony	2 40
	3 00

The deposition of Henry C. Benner, taken at the request of R. K. Scott, esq., counsel for claimant, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Selmar Siebert vs. *The United States.*

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, and your place of residence the past

year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant?

Answer. My name is Henry C. Benner; my occupation is that of a copper-plate printer; my age is forty-five years; my residence the past year has been in Washington city. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

1st interrogatory by the counsel for the claimant. Have you any knowledge of the plate of the Straits of Mackinac engraved by the claimant? If so, state the same fully, particularly as to the number of good impressions said plate was capable of yielding.

Answer. I have knowledge of said plate. I saw it in Mr. Siebert's possession after it was finished, and took twelve or fifteen impressions from it. At that time it was capable of yielding about four thousand good impressions. About two or three months after that the said plate was sent to me from the topographical bureau to print. Captain Smith was in charge of the bureau. After printing two hundred copies, Captain Smith asked me how many impressions the plate would stand, and I think I told him eighteen hundred or two thousand. The numerous alterations which had been made in the plate since it was first in my hands had so injured it that it was not capable of yielding as many impressions as it was when I first saw it.

2d interrogatory. Did Mr. O'Brien, or any other person, inform you that the plate had been sent to Mr. Dougal, and that he had made the alterations in it, and that he (O'Brien) printed some impressions from it while in Mr. Dougal's hands?

Answer. I know that Mr. Dougal made some alterations in that plate, but I do not know that he made them all. Mr. O'Brien informed me that he took some proof impressions while the plate was in Mr. Dougal's hands.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

HENRY C. BENNER.

Witness recalled, and the following interrogatories propounded, viz:

3d interrogatory by counsel. How many impressions have been printed from the plate of the Straits of Mackinac, and how many copies is it now capable of producing?

Answer. Fourteen hundred copies have been printed. The original plate is not now used. It has been electrotyped, and any amount of impressions can be taken.

4th interrogatory. What was the expense of electrotyping this plate?

Answer. I do not know exactly. Mr. Matthews offered to do it by contract for one hundred and seventy-five dollars; but it was done at the Coast Survey office, and I believe cost about one hundred dollars.

Cross-interrogatories by Deputy Solicitor.

1st cross-interrogatory. When you say that any number of impressions can be taken, do you mean that one electrotype plate can take any number?

Answer. No; not over twelve hundred can be taken from one electrotype plate; but it can be duplicated, so as to take any number from a number of plates. Each duplicate plate will cost about fifty dollars.

2d cross-interrogatory. Do you know whether Mr. Siebert made any alterations in the plate after you took the twelve or fifteen impressions spoken of in your first answer?

Answer. I do not know.

HENRY C. BENNER.

Sworn to and subscribed before me this 17th day of May, 1858.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Colonel Abert to the Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, April 15, 1858.

SIR: In answer to the letter of S. H. Huntington, esq., chief clerk of the Court of Claims, of the 30th ultimo, I have the honor of transmitting herewith copies of all reports and correspondence to be found in the files of this office relative to the claim of Selmar Sieber, esq.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Commanding.

Hon. JOHN B. FLOYD,
Secretary of War.

WASHINGTON, *March* 24, 1856.

SIR: Reluctantly obeying the pressure of the circumstances, the undersigned respectfully ventures to spread before you a statement of the history of a certain chart of the Straits of Mackinac, emanated from the Bureau of Topographical Engineers, and engraved, in conformity to the contract, on copper. The time which unavoidably has been spent on this work, as well as the manner and style in which the same has been executed by the undersigned, have recently been made the subject of a complaint against your petitioner, though previous to that the work itself had been rejected at random, and payment refused by the officer in question, Lieutenant M. L. Smith. The contract, according to which said work has been allotted to the under-

signed by Lieutenant Smith's predecessor, Captain Lee, reads as follows:

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac, at the following rates:

Copper plate, $56; engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes, $1,150; sailing directions at $1 50 per one hundred letters, of whatever kind; printing per one hundred copies, $12; paper per hundred copies, $10.

Subject to the following conditions, viz:

1st. A proof impression in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile bay, of sanding to Coast Survey sheet No. 2 of Long Island Sound, and of lettering to the War Department map of head of Green bay, is to be delivered to me, or other person acting in my stead, before the 1st day of April, 1855, and, if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken above three hundred, but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid to you at Coast Survey rates, according to a schedule in my possession for your inspection, the day's work being estimated at six dollars.

6th. After the final corrections are made, the engraving approved of by me, and the hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOS. J. LEE,
Captain Top. Engineers.

MR. SELMAR SIEBERT.

I accept the above conditions. Washington, August 21, 1854.
SELMAR SIEBERT.

Though it was evident that by a literal application of such an instrument almost any labor, no matter how accurate and satisfactory, might be rejected, your petitioner did not hesitate nor quarrel about the wording, but undertook the work, trusting on the one hand that

such an application could never be intended with a man who has carried out for a series of years so many governmental orders to the satisfaction of the respective officers as well as the public at large; and on the other that he had to deal with competent judges on the subject.

Agreeably, then, to the foregoing contract, the drawing of the chart, "Straits of Mackinaw," was handed unto the undersigned and the work begun. After three months labor the engraver was directed to stop, in order to take out the degrees and part of the outlines, both having been ascertained to be erroneous in the original. By this weary and difficult process almost the entire labor of the said three months had to be destroyed; nor was that all, for the drawing itself being incomplete when first delivered to the engraver, had repeatedly to be given up to the draughtsman, Mr. Boschke, to get it finished; then again another delay was caused on the part of the draughtsman aforesaid, that the engraver should not proceed, as the taken out degrees, &c., might after all be found to be correct. Thus the engraving, stopping and recommencing of the chart "Straits of Mackinaw" went on till April, 1855, taking it entirely out of the power of the engraver to finish the work within the period stipulated by contract, the office itself in question changing hands during that time, and Mr. Boschke representing himself as the manager, till the present head resumed the duties of Captain Lee.

All these and other annoying delays having been born over, the work had at the close of the year 1855, under continued additions and alterations on the drawing and plate, so far proceeded at last that a proof impression could be sent to Lieutenant M. L. Smith, in order to institute a final examination and correction of the work done, before giving the plate its last finish and bringing in the positions of the light-houses, which, among others, were still missing on the original drawing. However, instead of making these final corrections and of sending in addition the positions of the already indicated light-houses, at last your petitioner received the following note:

WASHINGTON CITY, D. C., *December* 4, 1855.

DEAR SIR: The proof sheet of Straits of Mackinaw sent me some weeks since has undergone examination by Mr. Boschke, and has been submitted also to Captain Macomb for inspection. The conclusion come to, both by Captain Macomb and myself, is:

1st. That the conditions of the contract as regards style of execution of the engraving have not been fulfilled.

2d. The original is not correctly represented by the proof either in the outline of shore or position of soundings; not mentioning many other errors that exist.

The extra work on the plate caused by changing the position of the meridian lines it is proper should be paid for, but the proof as represented by the proof sent, is rejected.

I am, sir, yours,

L. M. SMITH, *Topographical Enigneers.*

Mr. SIEBERT.

Yet while thus your petitioner had to pocket this edict of Lieutenant Smith's, having vainly remonstrated against such a summary rejection of an unfinished engraving, and that too on the evidence of a proof sheet which had been asked and given to no other purpose than that of making further corrections, but not for judging of the quality of the work of the engraver; strange as it sounds—the very corrections and alterations on the original drawing and the consequent ones on the plate in contradiction to Lieutenant Smith's decision went on as before till February last, when satisfactory impressions could finally been taken from the plate for the first time. Your petitioner then went to see and endeavored to convince Lieutenant Smith of the gross injustice of the premature decision aforesaid; he labored to account for all the slight variations between the original and the plate, on which occasion Lieutenant Smith clearly showed and distinctly avowed that he was not a competent judge of the subject himself. The undersigned left Lieutenant Smith under the impression that the matter would be finally adjusted to mutual satisfaction, for the fair impressions which were then produced by the undersigned, a sample of which is herewith annexed, seemed to meet not less Lieutenant Smith's approbation as they had satisfied most accomplished topographers, before whom the engraver had had occasion to lay specimens for inspection. But while waiting for a final settlement or further orders to finish the still incomplete part of the chart, the undersigned was, on the contrary, surprised by the following summons of the Hon. the Attorney General:

ATTORNEY GENERAL'S OFFICE, *February* 9, 1856.

SIR: The Secretary of War has referred to this office for advice as to the proper means to be adopted to obtain possession of a certain chart of the Straits of Mackinaw preparatory to entering upon the execution of a contract with you for certain engraving. Before giving the Secretary advice on the question proposed, the Attorney General desires you to call at his office for the purpose of obtaining a full understanding of the whole matter referred to.

Respectfully, (for the Attorney General,)
R. H. GILLET.

SELMAR SIEBERT, Esq.

Your petitioner proceeded to the office of the honorable the Attorney General, explaining, and his honor advised him to settle, if possible, this difficulty with Lieutenant Smith. Thereupon the following correspondence took place between Lieutenant Smith and your petitioner:

DEAR SIR: Since I had the pleasure of a conversation with you on the subject of the finishing and final approval of the chart, Straits of Mackinaw, I have been informed of an accusation, the nature of which tends to represent me as a man who withholds from the public, "to the detriment of the public interest," the said work. You are well aware that it needs only to add the positions of the light-houses to have the plate ready for the printer. I am exceedingly anxious that the work in question should go out of my hands, and request you therefore

most urgently to let me have the above-mentioned positions without any further delay.

I am, sir, with great respect, your obedient servant,

SELMAR SIEBERT.

Lieut. M. L. SMITH,
Topographical Engineers.

WASHINGTON CITY, *February* 15, 1856.

SIR: There is nothing to be put upon the plate other than what you have been in possession of for many months. The small table headed "light-houses" please leave as it is.

Yours, &c.,

M. L. SMITH,
Topographical Engineers.

Mr. SIEBERT.

DEAR SIR: I hope you will kindly excuse me for not having written to you before this, as the delay was attributable to the non-reception of impressions taken from the plate Straits of Mackinaw. Having, however, ascertained that these impressions have been sent to Colonel Abert, without my direction or permission, I hasten to make you the following communication: I am perfectly willing to see this work go from my hands, and less the drawing repeatedly asked for, and invite you therefore most kindly and most urgently to name a day and an hour when you will be at leisure to be present at my house while some competent gentlemen are making investigations into the disputed character of the drawing, plate, and impressions, in order to ascertain the source of those errors, the responsibility of which certain parties seem much inclined to cast upon the shoulders of the engraver. No sooner will the conclusions to which impartial umpires may come be brought upon paper, than I shall be found willing to deliver up what you were asking for. Should you not feel disposed to attend to such a meeting, I have to take this course anyhow, which you certainly will find a proper one, if considering that my reputation as well as my money are concerned in this matter. All I ask is to be put in a condition, first, that I can lay before an impartial authority this whole business, in which I have been wronged from the beginning.

I am, sir, with great respect, your obedient servant,

SELMAR SIEBERT.

Captain M. L. SMITH.

BUREAU TOPOGRAPHICAL ENGINEERS,
Washington City, D. C., March 1, 1856.

Mr. SIEBERT: Having announced to me that the plate for engraving chart of Straits of Mackinaw is ready for examination with reference to the final corrections mentioned in the contract for said plate, I take occasion in reply to inform you that I am ready to examine it, agreeably to contract, which requires the work to be delivered to me for that purpose.

On Monday, the 3d instant, (if the work is not brought here,) I will send the messenger of the office for it.

Very truly, &c.,

M. L. SMITH,
Assistant Topographical Bureau.

WASHINGTON, *March* 3, 1856.

SIR: From your kind note, which came to hand on Saturday, I learned that you had ignored my proposition as to the examination of the chart Straits of Mackinaw; however, will examine the work at your office, "agreeably to contract." I shall comply with expressed wishes as soon as the spoken of investigation at my own attelier shall have taken place, for which reason you will kindly excuse me for not being able to let you have the drawing to-day. The examination of which I speak will only cause a delay of a day or two, when it shall give me pleasure to send you the drawing. The course taken and the disposition evinced against me make it a matter of importance to me to have such material on hand, which can be made public if needs be.

Very respectfully, your obedient servant,

SELMAR SIEBERT.

Captain M. L. SMITH,
Topographical Bureau.

WASHINGTON, *March* 1, 1856.

DEAR SIR: Please let me know how many impressions you took from my plate, Straits of Mackinaw, and where they went to. As the plate is my property at present, you will perceive that no person has the right to ask for or take away any impression from that plate without my permission.

Most respectfully, your obedient servant,

SELMAR SIEBERT.

Captain PALMER,
Topographical Engineers.

WASHINGTON, *March* 5, 1856.

SIR: Misled by imperfect proof sheets and overlooking the fact that the original drawing of the chart, Straits of Mackinaw, is defective, you have in a letter dated December 4, 1855, peremptorily rejected my work. Better impressions have since come to your hands and it cannot be difficult for you to decide whether the plate as it now stands is satisfactory to you or otherwise. The examination of drawing, tracings, plate, &c., as spoken of, has taken place, and a protocol signed agreeably by the judges called together to decide upon the merits of either work. Satisfied, as I am, with the results of this investigation, I hasten to bring you in possession of the original drawing. The plate, of course, I cannot deliver up unto you before you have given a written opinion that it now meets your approbation. A

"rejected" plate would be of no value to you, and as the impressions in your possession must enable you to decide otherwise, I have to wait for a further expression on your part before I give up *what you are not willing to pay for*, according to your note of the 4th of December last. Your kind decision is expected at an early day. Be pleased to acknowledge in writing the deliverance of the drawing.

Yours, most respectfully,

SELMAR SIEBERT.

Lieutenant M. L. SMITH,
Topographical Engineer.

WASHINGTON CITY, *March* 6, 1856.

SIR: The original drawing of the Straits of Mackinaw was brought to my office this morning very much defaced.

Very truly, yours,

M. L. SMITH,
Topographical Engineers.

Mr. SIEBERT.

WASHINGTON, *March* 18, 1856.

DEAR SIR: Since my last of the 5th instant, I have heard nothing from you beyond the acknowledgment of the deliverance of the drawing "*very much defaced*," what naturally could not be otherwise after having been kept for a year and a half on an engraver's table. In all other and more pertinent respects you did not answer, though I have now patiently waited another fourteen days. I am therefore at a loss to see how I can satisfy the wishes of the Hon. Attorney General, and come to a final settlement with you, and shall therefore at once transmit the whole subject to the same high dignitary, before whom an accusation against me has been brought. If you should feel disposed, however, to compare and examine the dimensions between the drawing and plate without causing any further delay, I offer to aid you in sending to that purpose the plaster cast which I am about to prepare to be presented to the Hon. Secretary of War. The safe return of the cast is, however, requested at an early day, in order to reach its destination at the close of this week.

I regret very much this difficulty with you, whom I personally honor as a gentleman, but I don't see how I otherwise can come to what I consider to be my honest dues than by pursuing the course indicated above.

Be assured of the regard with which I am your obedient servant,

SELMAR SIEBERT.

Lieutenant M. L. SMITH,
Topographical Engineers.

A pursuance of the preceding correspondence clearly conveys the position maintained by either of the controversing parties.

First. The work of the engraver had been repeatedly arrested and delayed in consequence of the imperfect and incomplete state of the original drawing.

Next. The still unfinished plate, peremptorily rejected on the evidence of a hastily taken proof sheet, the defects of which, of course, were owing to the pressman and not to the engraver; then, the clear impression pronounced to be satisfactory, but still no payment offered, the interdict against the work of the engraver not removed; and last the deliverence of the drawing and "rejected" plate demanded; yet again, not a word said that the formed decision *not to pay anything beyond a couple of hundred dollars for the additions and corrections* had been changed into a compliance to what the engraver was entitled for his wearisome labor, not to mention his loss of precious time; and all this too while negotiations with another were going already. Your petitioner should sacrifice about $1,300 or more, honestly and faithfully earned in the performance of one of the most difficult and trying crafts allotted to mankind, in order to cover either presumed or real mistakes, with the origin and existence of which he was not to be charged, according to his own conviction, as well as to the opinion of competent professional men before whom he had laid the subject.

The undersigned challenges an impartial investigation to have it determined whether the chart "Straits of Mackinaw" is not equal in style and execution "to the upper sheet of the Coast Survey map of Mobile Bay," or of "sanding of Coast Survey sheet No. 2 of Long Island Sound," or of "lettering to the War Department map of the Head of Green Bay," the latter having been cut by one and the same hand in either work, having been cut by Mr. William Smith, presently engaged to perform the same office in manufacturing from my "rejected" work a new plate of the very chart of Straits of Mackinaw.

What amounts to the slight differences in the position of soundings and outlines, they are in fact very inconsiderable, and in comparison will be found greater in most works forthcoming in the Coast Survey or elsewhere, than in the chart of Straits of Mackinaw. Errors, so called, of this kind could never be avoided with mathematical exactness, even in the most famous works of a similar description, and in this instance have been caused by *the differences in the projection on the drawing and those on the plate, both having been made by the said draughtsman aforesaid*, and without the interference or assistance of the engraver, under the direction of the respective officers of the bureau; and owing to the carefulness with which the engraving has been executed, these differences or variations, so called, have been pronounced by competent judges to be *smaller on the plate than in the original. Distances on impressions* have besides been compared by Lieutenant Smith *with those on the plate*, though it is generally known that the shrinking of the paper is so considerable as not to permit any such comparison. Your petitioner is sorry to be forced to the conviction that it was long ago the fixed purpose on the part of the managers of this chart, "Straits of Mackinaw," as represented on my plate, to do away with the present work and to make him the cul-

prit and sufferer, in order to produce something less objectionable in its original conception, or in their own estimation ; and while the undersigned was still corresponding with Lieutenant Smith, a contract has been agreed upon with another engraver for the same work; and further, while Lieutenant Smith left unanswered all your petitioner's solicitations, and he and others cast all the blame upon the former's work, they did not only not hesitate to take away impressions from the plate, but Lieutenant Smith himself went out in search of it, trying to put himself in possession of your petitioner's property by force, while he steadily and stubbornly refused to offer payment, and thus to remove any obstacle in the way of the accomplishments of his design.

Fifteen years ago your petitioner followed an invitation of the United States government and left comfortable circumstances in order to be instrumental in the achievement of great scientific pursuits on this side of the Atlantic.

He has perpetuated on copper many valuable researches and results of important surveying or topographical explorings, and if no worldly goods uniformly earned the appropriation of the learned gentlemen under whose directions he was operating, yet all that time he has never met with a treatment as that which has been kept in store for him at the office in which presently Lieutenant M. L. Smith is acting as the principal. Your petitioner is not in the circumstances to look with indifference at the threatened loss of a claim of $1,764; and if in the chart of Straits of Mackinaw are to be found in reality errors of such magnitude, though he is confident that such is not even the case with the drawing, as to make it necessary to cancel the same, he does not see why he shall be the sufferer as long as it is not proved that he and he alone is the culpable party.

While therefore your petitioner was unwilling to place himself at the tender mercies of Lieutenant M. L. Smith and the draughtsman aforesaid, he now places the whole subject before your honor, confidently relying that you will cause such an investigation which will insure justice unto the one who has been wronged.

And as it is difficult to read or to take measures from a copper-plate, the impressions on paper, however regular, show some slight variances to a strict investigator, he has endeavored to present your honor the nearest possible and most correct representation of the engraving by preparing a plaster cast of the chart of the Straits of Mackinaw, which, with some others, he takes pleasure to annex. Your honor will no doubt coincide in the opinion of the engraver, that such plaster casts are the most convenient and suitable models to be kept in the archives of the various departments from which valuable maps and charts emanate, as they represent with great accuracy the dimensions of the engraving itself. They deserve a preference before the electrotype, because the relief of the latter makes it exceedingly difficult to take minutely accurate measures ; nor is the plaster subjected to such expansions and contractions as usually take place with paper when exposed to different temperatures or pressures, because the water used in making such a plaster cast forms a chemical constituent of the then hydrate of sulphate of lime. Your petitioner does not hesitate to declare such casts as of the same value to the topographer

as they have been long since considered to be to the anatomist, phrenologist, sculptor, architect, &c.

The undersigned has the honor to be, with the highest regard, your most obedient servant,

SELMAR SIEBERT.

Hon. JEFFERSON DAVIS,
Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, April 12, 1856.

SIR: I have the honor to submit the following, in reply to a paper submitted by Mr. Selmar Siebert to the honorable Secretary of War, concerning an engraved plate of the Straits of Mackinaw:

The only points contained in the paper deemed necessary to reply to are—

First. That the plate in correctness, style of execution, and finish, has been done according to contract.

Second. That, without cause or reasons, I have refused to examine or accept his plate, thus having kept him out of his honest dues.

In reference to the first point I state that a final examination of the plate was completed on the 11th inst., (yesterday,) and the errors and corrections required are in such a shape that they can be submitted for inspection whenever desired.

In reply to the second point, the mere fact that the plate has just undergone a final examination (commenced and gone through with without any knowledge of the paper) would seem to show that the statement made is incorrect. I will add that for nearly a year every exertion has been made (except advancing money, as Mr. Siebert desired) to induce the completion of the plate, so that a final examination could be made, as the contract specifies.

I am, very respectfully, sir, your obedient servant,

M. L. SMITH,
Lieut. Top. Eng., Ass't in Bureau.

Colonel J. J. ABERT,
Colonel Corps Top. Eng.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, April 12, 1856.

SIR: The superintendence of the engraving and of the issuing of the charts of the lake survey being a duty specially assigned to Captain M. L. Smith, assistant to the bureau, I have the honor to submit a copy of his report and explanation in relation to the complaint of S. Siebert, esq., of the 24th of March.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Corps Top. Eng.

Hon. JEFFERSON DAVIS,
Secretary of War.

Copy of indorsement on the above.

The case as presented now seems to be merely a question of the execution of the contract, involving some departures by both the contracting parties from the design originally contemplated. Whatever allowances are to be made for alterations or delays caused by the Topographical Bureau, and whatever deductions are to be made on account of shortcomings in the style or accuracy of the engraving, are questions which the bureau is expected either to adjust with its contractor or to reduce to distinct propositions, if it be found necessary to refer them for the decision of the War Department.

JEFFERSON DAVIS,
Secretary of War.

WAR DEPARTMENT, *May* 13, 1856.

BUREAU TOPOGRAPHICAL ENGINEERS,
April 16, 1858.

I certify that the within and foregoing are true copies of the original letters of Mr. Selmar Siebert, Captain M. L. Smith, and Colonel J. J. Abert, and of the indorsement of the honorable Secretary of War upon the letter of Colonel Abert; and also of the copies of correspondence between Mr. Siebert and Captain Smith, as given in the communication of Mr. Siebert, the originals of which are not in the files of this office.

J. J. ABERT,
Colonel Corps Top. Engineers.

Report of Colonel Abert to the Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, December 14, 1858.

SIR: I have the honor to acknowledge your direction to report upon an application from the Court of Claims for further evidence from the War Department in the case of Selmar Siebert *vs.* the United States.

The papers applied for are:

"1. Copy of settlement made by Captain M. L. Smith, topographical engineers, with said Siebert."

"2. Copy of the receipt and protest given and made by said Siebert at the time of said settlement, together with any other information in your department tending to elucidate said claim."

With regard to the papers applied for, viz: a copy of the settlement made by Captain Smith with Mr. Siebert, and a copy of the receipt and protest given and made by him at the time of said settlement, they are not to be found in the files of this office, but it is presumed

that a reference to the accounts of Captain Smith on file in the Third Auditor's office will give the information desired.

I transmit herewith copies of the following papers on file in this office, which are considered to have a tendency to elucidate the claim of Mr. Siebert:

1. Letter of S. Siebert to the Hon. Secretary of War, dated May 13, 1856.

2. Letter of Lieutenant M. L. Smith to Colonel Abert, dated May 29, 1856.

3. Letter of Colonel Abert to the Hon. Secretary of War, dated May 30, 1856.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Corps of Topographical Engineers.

Hon. JOHN B. FLOYD,
Secretary of War.

Selmar Siebert to the Secretary of War.

WASHINGTON, *May* 13, 1856.

SIR: You will be pleased to remember that it is nearly two months since I have delivered the plate of "Straits of Mackinac" into the hands of Lieutenant M. L. Smith, and that, according to all usages and common propriety, it should not then have passed another week before I had received payment therefor. But in spite of all my solicitations I have not got my money at this very hour.

Having been referred to Mr. Campbell by your honor some weeks ago, I called on that official several times without gaining any progress in the settlement of my claim; and after all these vexatious and evident chicaneries I was told, on the one hand, that you had not given any decision as yet, and, on the other, that Lieutenant M. L. Smith would, perhaps, feel disposed to pay part of my bill. Meanwhile I caught Mr. Smith in the act of taking again several hundred impressions from my unpaid plate. This treatment I am not willing to submit to any longer, and would have forthwith sought for redress in another quarter had I not deemed it due to your honor to address you once more on this subject, fully convinced, as I am, that it was only owing to the great pressure upon your time that my just demand has been so far totally neglected, if not held in derision by others.

I hope you may be able and feel disposed to make an end of this without delay, else I shall be driven, against my will, to an extremity at once disagreeable to me and no doubt injurious to another party, against which my complaint must be directed.

I have the honor to be, with great regard, your obedient servant,

SELMAR SIEBERT,
No. 209 *I street, corner of* 20*th.*

Hon. JEFFERSON DAVIS,
Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 13, 1858.

I certify that the within and foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps of Topographical Engineers.

Captain Smith to Colonel Abert.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
May 29, 1856.

SIR: The plate of the Straits of Mackinac, engraved by Mr. Selmar Siebert, having been sufficiently examined and corrected to enable some conclusions to be arrived at as to the manner in which the contract has been fulfilled, I beg leave to summit for your consideration the following statements and proposition:

The contract (a copy of which accompanies) specifies that "in style and finish of topography" the impression should correspond in every respect "to the upper sheet of Coast Survey map of Mobile Bay;" "of sanding to coast sheet No. 2 of Long Island Sound, and of lettering to the War Department map of the Head of Green Bay.

"The plate is to be capable of yielding 3,000 fair impressions. That the assistant in the bureau is to be the judge of the quality of the work. That all additions and corrections other than those caused by your own fault and neglect will be paid for at Coast Survey rates, the day's work being estimated at six dollars."

1. In reference to "style and finish," the standards alluded to in the contract are not, in my opinion, come up to. This conclusion is confirmed by the accompanying letter from Captain Humphreys, marked "A."

2. The plate is judged not capable of yielding 3,000 fair impressions; in fact, parts of it are already giving away, and two hundred only have been struck off. In confirmation of this opinion, the accompanying letter from Mr. Benner, printer, is referred to, marked "B."

3. Since Mr. Siebert delivered the plate as being finished, numerous corrections have been made, estimated in the Coast Survey office to amount to 17 days. These corrections arose from his own "fault and neglect," consequently are chargeable to him.

4. His charge for "taking out the degrees and retouching the work" being considered excessive, was valued, at my request, by an engraver, and corresponding deduction made; on this point reference is made to letter marked "C," from Mr. Dougal.

Deductions made from Mr. Siebert's bill.

One-third is deducted from $1,150, amount charged for engraving	$383 33
From the charge, $350, for "taking out the degrees, &c.," $296 is deducted, see letter "C"	296 00
Fifty-two dollars and fifty cents was paid for corrections charged to him	52 50
Total	731 83
Amount of Siebert's bill as rendered	1,764 75
Amount deducted	731 83
Balance	1,032 92

I am willing to pay Mr. Siebert $1,032 92.
Respectfully submitted.

M. L. SMITH,
Topographical Engineers.

Colonel J. J. ABERT,
Corps Topographical Engineers.

Copy of Selmar Siebert's bill.

For engraving chart of Straits of Mackinac	$1,150 00
For copper plate	56 00
For taking out the degrees and restoring the work thereby spoiled	350 00
For additional work and alterations	100 00
For letters and sailing directions and notes, 6,600, at $1 50 per 100 letters	99 00
For additional letters, 650	9 75
	1,764 75

A.

Contract.

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac, at the following rates, viz:

Copper plate	$56 00
Engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes	1,150

Sailing directions, at $1 50 per 100 letters, of whatever kind.

Printing, per 100 copies - - - - -	$12 00
Paper, per 100 copies - - - - -	10 00

Subject to the following conditions, viz: 1st, a proof impression, in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay; of sanding to Coast Survey sheet No. 2 of Long Island Sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the first day of April, 1855; and if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken beyond three hundred, but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection, the day's work being estimated at six dollars.

6th. After the final corrections are made, the engraving approved of by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOMAS J. LEE,
Captain Topographical Engineers.

Mr. SELMAR SIEBERT.

WASHINGTON, *August* 21, 1854.

I accept the above conditions.

SELMAR SIEBERT.

A.

Note of Captain Humphreys.

WASHINGTON, *May* 26, 1856.

DEAR SIR: At your request I have examined the proof impression of the map of Mackinac straits, engraved by Mr. Siebert, and have carefully compared it with the standards named in the contract for engraving. The conclusions that I have arrived at are as follows, viz:

The topography is inferior to the standard, with the exception of a few hills.

The sanding is inferior to the standard, except in a few places.

The figures are inferior to the standard.

The lettering is inferior to the standard, but in a less degree than the other parts.

It is somewhat difficult for me to say with precision how much the value of the engraving is diminished by this inferiority of execution; but if the figures and letters are accepted or paid for as standard in quality, it appears to me that, all the circumstances considered, a deduction of *one-third* the price for the *topography* and *sanding or shading* would not be excessive, but justified.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Captain Topographical Engineers.

Lieutenant M. L. SMITH,
Top. Eng'rs, Ass't to Chief of Corps of Top. Eng'rs,
Topographical Bureau.

B.

Note of H. Benner.

WASHINGTON, *May* 14, 1856.

DEAR SIR: Your favor of the 12th instant was duly received, in which you ask me how many impressions can be taken from the plate of the *Straits of Mackinac*, having printed two hundred impressions from the said plate. I would say that one thousand eight hundred is the most that I think the plate would print.

Respectfully, yours, &c.,

HENRY BENNER.

Lieutenant M. L. SMITH,
Topographical Engineers, Washington, D. C.

C.

Note of W. H. Dougal.

GEORGETOWN, *May* 24, 1856.

DEAR SIR: My estimate of time necessary for erasing and restoring work on "Straits of Mackinac" is, for taking out meridian lines, five days; for restoring all work necessarily erased with the lines, three to four days. I would consider nine days' work a liberal estimate for the whole.

Very respectfully, your obedient servant,

WILLIAM H. DOUGAL.

M. L. SMITH, Esq.,
Topographical Engineers.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 13, 1858.

I certify that the within and foregoing are true copies of the originals on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

Report of Colonel Abert to the Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, May 30, 1856.

SIR: The matter of publishing and paying for the charts of the lake survey being a duty of the assistant to the bureau, the letters of the engraver, Siebert, to the War Department are considered as an appeal to the War Department against the course of the assistant, and the reference of the matter to this bureau an order to obtain desired information.

The letter and account of Mr. Siebert were therefore referred to Lieutenant Smith, and the report of Lieutenant S. is herewith submitted. From this report will be perceived the deductions and the reasons for the same, which Lieutenant S. thinks should be made from Siebert's account, which are approved by the bureau.

If, after decision of the War Department, Mr. Siebert continues his discontent, I know of no other course than to refer the whole matter to the accounting officers.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Corps Topographical Engineers.

Hon. JEFFERSON DAVIS,
Secretary of War.

Indorsement of the Secretary of War on the foregoing.

WAR DEPARTMENT, *June* 2, 1856.

The contract makes the assistant in the bureau the judge of the manner in which the work is executed, and the department does not propose to intervene between the contracting parties.

JEFF'N DAVIS,
Secretary of War.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 13, 1858.

I certify that the within and foregoing are true copies of the originals on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

Letter of Counsel to the Third Auditor.

OFFICE OF SOLICITOR OF COURT OF CLAIMS,
December 21, 1858.

SIR: Please furnish copy of the bill and receipt of Mr. Selmar Siebert, paid by Lieutenant M. L. Smith in the summer of 1856, for engraving chart of the Straits of Mackinac, together with any papers accompanying that bill, put in either by the government officer or the claimant, tending to show the nature of the transaction, and the grounds on which the payment was offered and received.

The above papers are required as evidence in the claim of S. Siebert against the United States, pending in this court, and are to be put in by consent.

Very respectfully,

JOHN D. McPHERSON,
Deputy Solicitor for the United States.
R. K. SCOTT,
Attorney for Claimant.

R. J. ATKINSON, Esq.,
Third Auditor of the Treasury.

Reply of the Third Auditor.

TREASURY DEPARTMENT,
Third Auditor's Office, December 22, 1858.

SIR: I respectfully acknowledge the receipt of the note signed by yourself and by R. K. Scott, attorney for claimant, of the 21st instant, and, in compliance with the request therein, transmit herewith an authenticated copy of the bill and receipt of Mr. Selmar Siebert for $1,032 92, paid by Captain M. L. Smith, topographical engineers, on the 17th June, 1856, and of the agreement filed therewith.

Very respectfully, your most obedient,

R. J. ATKINSON, *Auditor.*

JOHN D. McPHERSON, Esq.,
Deputy Solicitor for U. S. Court of Claims.

Mr. Siebert's bill.

THE UNITED STATES to SELMAR SIEBERT, DR.

On account of printing and distributing charts of lake surveys:

May, 1856.—To one copper plate			$56 00
To engraving chart of Straits of Mackinac			1,150 00
To taking out degrees and restoring work			350 00
To additional work and alterations			100 00
To letters, sailing directions, and notes, 6,600, at $1 50 per 100			99 00
To additional letters			9 75
			1,764 75
By deductions from above bill, viz: non-compliance with contract "in style and finish of topography," and in number of impressions plate shall be capable of yielding	$383 33		
Overcharge for erasing degrees, &c	296 00		
Additional corrections required	52 50		
			731 83
			1,032 92

Received at Washington, of Lieutenant M. L. Smith, topographical engineers, this 17th day of June, 1856, one thousand thirty-two dollars and ninety-two cents, in full of the above account, but under protest.

SELMAR SIEBERT.

I certify that the above account is correct; that the items charged therein were required and furnished on account of the service above mentioned, and that the same were necessary therefor.

M. L. SMITH,
Lieutenant Topographical Engineers.

Contract.

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac, at the following rates, viz: Copper plate, $56; engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes, $1,150; sailing directions, at $1 50 per 100 letters, of whatever kind; printing, per hundred copies, $12; paper, per hundred copies, $10. Subject to the following conditions, viz: 1st, a proof impression, in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay; of sanding to Coast Survey sheet No. 2 of Long Island Sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the 1st day of April, 1855; and if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken beyond three hundred, but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work, and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection, the day's work being estimated at six dollars.

6th. After the final corrections are made, the engraving approved of by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOS. J. LEE,
Captain Topographical Engineers.

Mr. SELMAR SIEBERT.

WASHINGTON, *August* 21, 1854.

I accept the above conditions.

SELMAR SIEBERT.

TREASURY DEPARTMENT,
Third Auditor's Office, December 22, 1858.

Pursuant to an act to provide for the prompt settlement of public accounts, approved March 3, 1817, I, Robert J. Atkinson, Third Auditor of the Treasury of the United States, do hereby certify that the aforegoing are true copies of the bill and receipt of Selmar Siebert, for $1,032 92, paid by Captain M. L. Smith, topographical engineers, on the 17th June, 1856; and, also, of the agreement filed therewith now on file in this office.

R. J. ATKINSON, *Auditor.*

Be it remembered, that Robert J. Atkinson, who certified the aforegoing transcripts, is now, and was at the time of doing so, Third Auditor of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Howell Cobb, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

[L. S.]

HOWELL COBB,
Secretary of the Treasury.

IN THE COURT OF CLAIMS.

SELMAR SEIBERT *vs.* THE UNITED STATES.

Evidence offered for the United States.
Deposition of William H Dougal.
Letter of Third Auditor of February 24, 1859, and enclosure.
Deposition of George McCoy.

JOHN D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Testimony of William H. Dougal, for the United States, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the 12th, 14th, and 21st days of February, A. D. eighteen hundred and fifty-nine, personally came William H. Dougal, the witness

within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

[L. S.] EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witness.

Travel, 12 miles, at 5 cents per mile	$0 60
Attendance, 3 days, at $1 50 per day	4 50
	5 10

Commissioner's fees.

For taking testimony, 10 pages, 2,300 words, at 20c. per 100	$4 60
For serving subpœna, 50 cents; oath, 10 cents	60
For extra time and trouble caused by adjournments, exhibits, &c., 3 days, at $2 per day	6 00
Total	11 20

The deposition of William H. Dougal, taken at the request of John D. McPherson, esquire, deputy solicitor, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. The United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is William H. Dougal; my occupation, an engraver; my age is thirty-six years; my residence the past year, Georgetown, District of Columbia; I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

The witness and the counsel for the claimant appeared at eleven o'clock, according to appointment, but the claimant being unable to attend, and the deputy solicitor being absent, by request of claimant's counsel the examination of the witness is adjourned to Monday at 11 o'clock a. m., of February 14, 1859.

EDM. F. BROWN,
Commissioner.

SATURDAY, *February* 12, 1859, 11½ a. m.

MONDAY, *February* 14, 1859.

Met at 11 o'clock, pursuant to adjournment.

1st interrogatory by the deputy solicitor. Did you work upon an engraved plate of chart of the Straits of Mackinac, by direction of the Topographical bureau, in the year 1856? If yea, state whether you improved the style and finish of the topography, or of the sanding, or of the lettering; answering particularly as to each of these specifications, and stating what you charged and were paid for such work?

Answer. I did work on the plate of the chart of the Straits of Mackinac in 1856. I improved the topography slightly. I did not improve the whole of the topography of the plate, but only a small part of it, which I will point out on the chart which I now present, marked exhibit A. This copy I have just received from the Topographical bureau, and was informed that it is an impression from an electrotype copy of the original plate. It appears to me to have been taken after the plate had been much worn. To the best of my recollection, the only places where I improved the topography, I have marked on this chart. (See six places marked "top.") I did not improve the style of the sanding nor of the lettering. Having no book account, I have no recollection of the amount which I charged and was paid for said work.

2d interrogatory. Did you make any additions to the work on said plate beyond the improvement referred to in the foregoing interrogatory? If yea, state what these additions were, from what source they were taken, and the price charged for such work.

Answer. I did make additions to the work on said plate beyond those mentioned in my last answer, which additions I have marked with red ink on exhibit A. This additional work consisted of corrections of the coast lines, lines of rivers, and outlines of sanding. They were taken from the original drawing; I supposed it to be the original, as it was the only one I ever saw. The corrections were indicated by tracings furnished me by the bureau, which tracings were made by Mr. Boschke, the draughtsman of the bureau. I had no communication with Mr. Boschke; but Captain Smith, who was then in charge of the bureau, represented to me that these tracings, which I now exhibit, were taken by Mr. Boschke from the original map, and that the red lines indicated the departures from the original in the engraved chart.

[Claimant's counsel asks that the tracings now shown be attached to exhibit A; but the witness replies that he obtained them this morning from Captain Woodruff, who is now in charge of the Topographical bureau, under his promise that they should be returned to said bureau. E. F. B., *Commissioner*.]

I have no recollection of the price charged for said work. It depended upon the time I was employed upon it; and as I do not recollect that, it is impossible for me to say, having kept no books. If I knew how long I was employed upon it, I could tell the amount; or if I knew the amount which I received, I could tell then the time I was employed.

3d interrogatory. Did you execute any other work on said plate?

If yea, state fully what other work and the price you were paid for the same.

Answer. I have no recollection of putting any other work upon said plate.

The deputy solicitor not being present to complete the interrogatories, it was agreed by the witness, the claimant, and his counsel, to adjourn to Monday next, the 21st instant, at 11 o'clock a. m., unless an earlier time shall be agreed upon, in which case notice is to be given to both parties.

EDM. F. BROWN,
Commissioner.

FEBRUARY 14, 1859, 1 o'clock p. m.

MONDAY, *February* 21, 1859.

Met pursuant to adjournment.

4th interrogatory. State, if you can, how the proofs from said plate, when it came into your possession, compared in style and finish of topography with the upper sheet of the Coast Survey map of Mobile Bay.

Answer. That I am not able to state, as I have never compared them.

5th interrogatory. Please state how many fair impressions the plate was, in your opinion, capable of yielding when it left your hands.

Answer. I should judge that it would take the usual number of impressions, say an average of three thousand.

6th interrogatory. Please state, as nearly as you can, how far inferior the plate as it came into your hands, was, in style and finish of topography, to the condition in which you delivered it back to the bureau.

Answer. It was not in any way improved by me in general style and finish, but only on points indicated in my former answers. My bill will be a fair indication of the value of those improvements.

Cross-interrogatories by R. K. Scott, esq., counsel for the claimant.

1st cross-interrogatory. Do you know how many impressions had been taken from the plate of the Straits of Mackinac, between the time it came into the hands of Captain Smith and his delivering it to you?

Answer. I do not, sir.

2d cross-interrogatory. Do you know what additional work and alterations were made on said chart by Mr. Siebert prior to its reception by Captain Smith; and whether said additional work and alterations were not caused by errors and corrections of errors in the original map sent to Mr. Siebert by the Bureau of Topographical Engineers?

Answer. I have no knowledge of that at all.

3d cross-interrogatory. Did the additional work you put on the plate, as shown by your marks in red ink on exhibit A, attached to your deposition, consist of alterations in the plate, or simply strengthening the parts of the plate so marked?

Answer. They were alterations. My answer to the 2d interrogatory states what those alterations were.

Direct examination resumed by deputy solicitor.

7th interrogatory. Please compare the chart of the Straits of Mackinac, now exhibited to you, with the upper sheet of the Coast Survey map of Mobile Bay, now also exhibited to you, and state how the former compares with the latter in style and finish of topography.

[It is agreed by the counsel on both sides that the chart of the Straits of Mackinac now exhibited is an impression from Mr. Siebert's plate prior to its alteration by Mr. Dougal, and that the map of Mobile Bay is that referred to in the contract of August 21, 1854, as a sample of the work to be executed.—E. F. B., *Con'r.*]

Answer. I think there is a difference in favor of the Mobile map. It is hard for me to specify the value of such difference. This difference might arise almost entirely from a difference in style of the original drawings of the two charts.

8th interrogatory. Please state how the lettering on the said chart of the Straits of Mackinac compares with that on the War Department map of the Head of Green Bay.

Answer. I think it fully equal, from the recollection I have of the latter. I believe they were both executed by the same person.

9th interrogatory. Please compare the said chart of the Straits of Mackinac with the Coast Survey sheet No. 2 of Long Island Sound, and state how the sanding of the former compares with that of the latter.

Answer. I think it somewhat inferior in mechanical execution and finish.

10th interrogatory. Please state, if you can, what would be the value of the difference, both of the sanding and of the topography.

Answer. It is difficult to say precisely, but I should estimate a difference of *one-quarter* upon the sanding; but cannot estimate the difference in topography, as stated in my answer to the 7th interrogatory.

Cross-interrogatories resumed.

4th cross-interrogatory. Did you make or furnish Captain Smith with an estimate or value of the additions and alterations made by Mr. Siebert on the said plate of the Straits of Mackinac in consequence of the errors in the original drawing furnished to him (Siebert) by the bureau?

Answer. To the best of my recollection, I did not.

5th cross-interrogatory. Look at the said chart of the Straits of Mackinac, and say, as near as you can estimate it, what would be the value or reasonable price for making the following additions, altera-

tions, and changes in the engraving of the plate caused by errors in the original drawing furnished by the bureau to the engraver, viz:

When the plate was about one-third engraved, the bureau ascertained that the *projection on the original drawing which had*, by the direction of the bureau, been put upon the plate and strongly engraved, *was incorrect*, and had to be taken out of the plate and be *replaced by another one which the bureau considered correct.* Also, *the number of the degrees* engraved by the fault of the bureau were *double the number now exhibited on the map, and had to be taken out*, because of the error in the first draught given to the engraver. Also, the northeast corner of the map had to be taken out of the plate after it was engraved, because of the error in the original draught, *and had to be replaced agreeably to a more correct drawing.* Also, *the sailing lines*, being found to be laid down erroneously in the original draught, and *having been engraved on the plate*, had to be *taken out and replaced* agreeably to the corrected draught. Also, *changes in the lettering* and soundings made necessary by alterations made by the bureau in the original draught.

Answer. It is not possible for me to make anything like a correct estimate of the value of the alterations just named, on account of the erasing connected with such alterations involving much additional labor, which cannot be ascertained until the erasures are made. The making of corrections always involves the erasing of much adjoining work. My charges for such work are always made after it is finished, and estimated according to the time employed upon it.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know of nothing of importance.

WM. H. DOUGAL.

Sworn to and subscribed this 21st day of February, 1859, before me.

EDM. F. BROWN,
Commissioner.

Letter from the Third Auditor.

TREASURY DEPARTMENT,
Third Auditor's Office, February 24, 1859.

SIR: As requested in your letter of the 22d instant, I respectfully transmit herewith an authenticated copy of voucher No. 3, second quarter 1856, of accounts of Lieut. M. L. Smith, topographical engineers, for $52 50 paid to Wm. H. Dougal, which, being in payment for engraving corrections on plate for Straits of Mackinac, appears to be the bill of Wm. H. Dougal, a copy of which you desire.

Very respectfully, your most obedient,

R. J. ATKINSON, *Auditor.*

JNO. D. MCPHERSON, Esq.,
Deputy Solicitor U. S. Court of Claims.

MR. DOUGAL'S BILL.

The United States to W. H. Dougal, Dr.

1856.	On account of printing and distributing charts of lake surveys.	Amount.
May 3	To engraving corrections on plate, Straits of Mackinac.....	$52 50

Received at Washington, of Lieutenant M. L. Smith, topographical engineers, this 3d day of May, 1856, fifty-two dollars and fifty cents, in full of the above account.

WM. H. DOUGAL.

I certify that the above account is correct; that the items charged therein were required and furnished on account of the service above mentioned, and that the same were necessary therefor.

M. L. SMITH,
First Lieutenant Topographical Engineers.

TREASURY DEPARTMENT,
Third Auditor's Office, February 23, 1859.

Pursuant to an act to provide for the prompt settlements of public accounts, approved March 3, 1817, I, Robert J. Atkinson, Third Auditor of the Treasury of the United States, do hereby certify that the aforegoing is a true copy of the voucher for $52 50 paid to Wm. H. Dougal, by Lieutenant M. L. Smith, topographical engineers, on the 3d May, 1856, now on file in this office.

R. J. ATKINSON, *Auditor.*

Be it remembered, that Robert J. Atkinson, who certified the aforegoing transcript, is now, and was at the time of doing so, Third Auditor of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Howell Cobb, Secretary of the Treasury of [L. S.] the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this twenty-third day of February, in the year of our Lord one thousand eight hundred and fifty-nine.

HOWELL COBB,
Secretary of the Treasury.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Testimony of George McCoy, for the United States, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the twenty-first day of March, A. D. eighteen hundred and fifty-nine, personally came George McCoy, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The adverse party was notified, did attend, and did not object.

EDM. F. BROWN,
Commissioner of the Court of Claims.

Fees of witness.

Attendance one day, at $1 50 per day	$1 50

Commissioner's fees.

Taking testimony, 4½ pages, 1,000 words, at 20 cents per hundred words	$2 00
One oath	10
	2 10

The deposition of George McCoy, taken at the request of John D. McPherson, esq., deputy solicitor Court of Claims, before Edmund F. Brown, commissioner for the District of Columbia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Selmar Siebert vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is George McCoy; my occupation, engraver; my age is fifty-three years; my residence the past year, Washington

City. I have no interest, direct nor indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

First interrogatory by the deputy solicitor. Please look at the map here exhibited to you, marked "exhibit C," attached to the deposition of Frederick Courtenay and others, and say how it compares in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay.

Answer. It is scarcely possible to draw a comparison between the two, for the reason that the characteristic adopted in the woods of the map of the Straits of Mackinac is different in some respects from that of Mobile Bay. In the map of Mobile Bay the woods are principally pine, and in the map of the Straits of Mackinac the woods are a mixture of oak, pine, and other forest trees. As far as the insertion of it on the copper goes, it is done as well as the characteristic will admit. The hill work on the map of the Straits of Mackinac is done as well as it possibly could be.

Second interrogatory. Please look upon the same map, and say how it compares in style and finish of sanding to Coast Survey sheet number two of Long Island Sound.

Answer. I do not think it equal to the map No. 2 of Long Island Sound, and the difference is probably produced by the imperfection of the impression of the map of the Straits of Mackinac.

Third interrogatory. Please look upon the same map and say how it compares, in style and finish of lettering, to the War Department map of Green Bay.

Answer. I have not seen the Green Bay map, but from my knowledge of lettering, I should say the map now shown is a good average specimen of map-lettering.

Cross-interrogatories by counsel for claimant.

First cross-interrogatory. Please look at the map now shown you, marked "exhibit A," attached to the deposition of W. H. Dougal, and say whether in your opinion that impression shows any improvement upon the impression you have just examined, marked "exhibit C," attached to the deposition of Frederick Courtenay and others.

Answer. I can discover no improvement. Certainly it is worse than the impression attached to Mr. Courtenay's deposition.

Fourth interrogatory by the deputy solicitor. Do you mean, by the last answer, that the plate has never been improved, or that the improvement may have worn out in printing a number of copies?

Answer. I can hardly answer this, unless I had an impression of the plate as it went into Mr. Dougal's hands; but between the two now exhibited I cannot see that there has been any improvement in those parts marked (Top.) by Mr. Dougal.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not; except that about three years ago the plate of the Straits of Mackinac, now before me, was sent to me by Captain Palmer, to whom it was sent by the bureau, with a request that I would make an estimate of the value of certain corrections on said

map of the positions of soundings on said plate. I made the estimate, which I believe was a little over one hundred dollars, but cannot say the precise amount.

GEORGE McCOY.

Sworn to and subscribed before me this 21st day of March, 1859.

EDM. F. BROWN,
Commissioner.

NOTE.—The foregoing testimony was taken in the solicitor's office in the Capitol, in the presence of the deputy solicitor and the claimant and his counsel; and the maps referred to were produced, attached to the testimony of the witness herein named, which testimony was heretofore taken before me.

EDM. F. BROWN, *Commissioner.*

COAST SURVEY OFFICE,
Washington, D. C., March 14, 1859.

DEAR SIR: In reply to yours of this date, I would state that Mr. George McCoy is perhaps the most competent person in this office to judge of the execution of an engraving, and I will instruct him to call upon you at such time as you may appoint.

Very respectfully, your obedient servant,

W. R. PALMER,
Capt. Top. Engr's, A. C. S. in charge

J. D. MCPHERSON, Esq.,
Deputy Solicitor, Court of Claims, Capitol.

IN THE COURT OF CLAIMS.—No. 1472.

SELMAR SIEBERT *vs.* THE UNITED STATES.

Claimant's brief.

The contract under which this claim arises is in the printed records of the case, pages 4 and 5, and is in the words and figures following, to wit:

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac at the following rates, viz:

Copper plate.....	$56 00
Engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes	1,150 00

Sailing directions, at $1 50 per 100 letters of whatever kind.

Printing, per hundred copies	$12 00
Paper, per hundred copies	10 00

Subject to the following conditions, viz: 1st. A proof impression, in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay; of sanding to Coast Survey sheet No. 2 of Long Island Sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the first day of April, 1855; and if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken beyond three hundred; but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection; the day's work to be estimated at six dollars.

6th. After the final corrections are made, the engraving approved by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOS. J. LEE,
Capt. Top. Eng.

Mr. SELMAR SIEBERT.

I accept the above conditions. Washington, August 21, 1854.
SELMAR SIEBERT.

By the provisions of the above contract the claimant engaged to engrave on copper a chart of the Straits of Mackinac at the rates therein mentioned, and subject to the conditions therein expressed.

The case therefore presents to the court for its consideration and determination the inquiry, as to whether the claimant complied with the prescribed conditions of the said contract, and whether any departures therefrom were caused by "his fault or neglect," or whether such departures, if any were made, were caused by the "fault or neglect" of the officers or agents of the defendant.

It is contended, on behalf of the claimant, that an examination of the whole evidence taken in the cause, both on his part and on that of the United States, establishes, beyond the shadow of a doubt, that the claimant fully performed his whole and entire duty under the

conditions of the contract, except as to such delay in the time in which the work was to be performed as was caused by the acts and errors of the agents of the United States.

It is proven beyond question that the original drawing furnished to the engraver was imperfect and erroneous. The errors in the original drawing of the Straits of Mackinac were not discovered until after the engraver had expended three months' labor upon engraving the plate, when he was directed to stop his work to take out the degrees and part of the outlines, both having been ascertained by the government officials to have been erroneous in the original drawing. Nearly the entire labor of three months had to be destroyed in consequence of this error in the original drawing. In addition to this, the said drawing was incomplete in other material respects when first placed in the hands of the engraver, which caused it to be frequently returned to the government draughtsman to get it finished, by which long delays were occasioned, and which rendered the completion of the engraving by the 1st day of April, 1855, (the time mentioned in the contract,) an utter impossibility, owing to the aforesaid errors and delays occasioned by the officer and agents of the United States. The evidence of these facts is found in the testimony of both the witnesses examined on behalf of the claimant and of the United States. See the testimony on this point of *Frederick Courtenay*, (printed record, page 11,) who says:

"I was employed some twenty-five or thirty days in making a part of the alterations on said plate, and in correcting errors which had been made in the original drawing by the draughtsman; also in restoring the work injured or destroyed by those corrections. I received over one hundred dollars for the part of the alterations and corrections which I made. Mr. Siebert and others were also engaged in making alterations in said plate."

In answer to the second interrogatory, viz: Were the corrections, alterations, and restoring work on said plate caused by the incorrectness of the original drawing? the same witness says: "The portion which I did were, and I believe them all to be so, but cannot say certainly."

Henry M. Knight (see Record, p. 14) says: "I obtained my knowledge from having worked upon the plate several times. I made corrections on it, by restoring the work which had been taken out, caused by incorrectness in the drawing which was furnished by the government officers. There were others besides myself engaged in making the alterations in said plate, namely, Mr. Evans, Mr. Siebert, and Mr. Courtenay."

To the interrogatory, Were the corrections, alterations, and restoring work on said plate caused by the incorrectness of the original drawing? he answers, "they were."

Albert A. Boschke, the government draughtsman of the chart, (Record, p. 19,) in answer to the interrogatory, Were any, and if any, what, alterations made in the original drawing after it was placed in Mr. Siebert's hands to be engraved, and by whom were such alterations made? he says:

"A considerable portion in the northwest corner of the map was

rejected after it was engraved, and substituted from a resurvey. The order to take it out was by Captain Macomb, and to alter it according to the new drawing furnished to Mr. Siebert."

In answer to the interrogatory, Were not the lines of the sailing directions also changed on the plate because of defect in the original drawing? this witness answers:

"Some of the sailing lines were changed by order of Captain Macomb, but not in defect of the drawing, but after reconsideration of the subject of sailing directions, to obtain a safer route for sailing vessels than was laid down on the drawing first put into the hands of Mr. Siebert."

This witness further states, in answer to the interrogatory, After the drawing was furnished to Mr. Siebert did Captain Macomb change the latitude and longitude of the map, and did this cause the changing of the degrees on the plate?

"Captain Macomb did change the latitude and longitude, and an order was given to Mr. Siebert to make the alterations on the plate, but I cannot recollect the details."

The cause of the delay in the execution of the engraving of the plate within the time specified in the contract being thus proved, beyond the possibility of contradiction, to have been owing entirely and exclusively to the acts of the recognized officers and agents of the defendant, there can be no controversy, or even captious objection raised against the case of the claimant on this ground.

The real and true issue involved in the matter is, first, whether the claimant complied with the requirements of the contract on his part; and, secondly, whether the United States, through its officers and agents, performed their part of the contract according to its terms and stipulations and true construction and meaning.

An impartial consideration of all the testimony in the cause is only needed to convince any judicial or unprejudiced mind that on the part of the claimant the terms and conditions of the contract have been not only substantially, but literally and in its fullest sense carried out by him. On the other hand, examined and judged of by the same true and unerring test, it is manifest that the obligations imposed by the provisions of the said contract upon the United States have not been complied with, but on the contrary, have been arbitrarily, and against reason and justice on the rights of the claimant, repudiated and violated. Unfortunately for the claimant, Captain Thomas J. Lee, of the corps of topographical engineers, a gentleman of distinguished scientific attainments, (with whom the contract was made,) had resigned his position in the army before the completion of the work in question; and it is not an unfair presumption that, had he remained in charge of the office he then filled, this controversy, in all probability, would never have arisen. His successor, Lieutenant M. L. Smith, who became, *ex officio*, by the fourth provision of the said contract, "judge of the quality of the work and of the paper and printing," in an interview with the claimant *clearly showed and distinctly avowed that he was not a competent judge of the subject himself.*— (See Record, page 26.)

That Lieutenant Smith was candid in his admission of ignorance of

the art of engraving is evident from the additional fact that, in his hasty and arbitrary action and decision on a subject which he "distinctly avowed he was not a competent judge," he called to his aid the taste or judgment of Captain Macomb, a brother officer, and of Mr. Boschke, the draughtsman; and, fortified by their opinions, as it seems, addressed to the claimant on the 4th of December, 1855, a letter, of which the following is a copy: (See Record, pp. 25 and 26.)

WASHINGTON CITY, D. C.,
December 4, 1855.

DEAR SIR: The proof-sheet of Straits of Mackinac, sent me some weeks since, has undergone examination by Mr. Boschke, and has been submitted also to Captain Macomb for inspection. The conclusion come to both by Captain Macomb and myself is—

1st. That the conditions of the contract, as regards style of execution of the engraving, have not been fulfilled.

2d. The original is not correctly represented by the proof, either in the outline of shore or position of soundings, not mentioning many other errors that exist.

The extra work on the plate, caused by changing the position of the meridian lines, it is proper should be paid for, but the proof, as represented by the proof sent, is rejected.

I am, sir, yours,

M. L. SMITH,
Topographical Engineers

MR. SIEBERT.

Upon reference to the contract it will be seen that "a proof impression, in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay; of sanding to Coast Survey sheet No. 2 of Long Island Sound; and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, *or other person acting in my stead*, before the 1st day of April, 1855, and, *if necessary, you are to wait one month before the final corrections to the proof are made;*" and in the 6th article of said contract it is stipulated that "after the final corrections are made, the engraving approved of by me, and the hundred impressions delivered, *together with the plate, if required, you are to recive the full amount of all charges as above,* but no part payment will be made.

Lieutenant M. L. Smith, "*the other person acting in my* (Captain T. J. Lee's) *stead,*" after keeping the proof-sheet of Straits of Mackinac *some weeks*, and submitting it for examination to Mr. Boschke and Captain Macomb for inspection, summarily rejected the proof. Now, the proof so rejected was sent, in accordance with the conditions of the contract, for the express purpose of receiving the "final corrections to the proof," which the claimant was bound to wait "one month for." Neither Mr. Boschke nor Captain Macomb had any right, under the contract, to pass judgment upon the style of execution of the engraving; and the use of their names by Lieutenant Smith adds nothing to the propriety of his action, which, in this in-

stance, as well as in his subsequent proceedings, he clearly violated, and utterly disregarded the provisions of the said contract and the rights of the claimant under it. This extraordinary and summary rejection of an unfinished engraving, on the evidence of a proof-sheet furnished for the purpose of making further corrections, led to a correspondence and interview between the claimant and Lieutenant Smith, which explains the nature of the controversy, and shows that the said Lieutenant Smith finally possessed himself of the said engraved plate of the Straits of Mackinac, and used the same for the benefit of the United States, and refused to the claimant the price or sum which, by his contract, he was entitled to receive from the United States.—(See printed record, pages from 23 to 38.) Instead of "*receiving the full amount of all charges*," as stipulated in the contract, the claimant, after many vexatious delays and much loss of valuable time in endeavoring to procure payment for his work after it had been taken and used by the United States, was compelled to accept the sum of $1,032 92, instead of $1,764 75, to which he was and is justly entitled. This payment of $1,032 92 was made to the claimant, and received by him under protest, on the 17th day of June, 1856.—(See printed record, page 39.) The grounds upon which this *ex parte* settlement, if such it can be called, are stated in the letter signed M. L. Smith, topographical engineers, addressed to Colonel J. J. Abert, corps topographical engineers, dated May 29, 1856, and printed on pages 35 and 36 of the record. In that paper Lieutenant Smith, after quoting a portion of the contract, proceeds to assert that the engraving, as completed, was deficient in the following particulars:

"1st. In reference to 'style and finish,' the standards alluded to in the contract are not, in my opinion, come up to.

"2d. The plate is judged not capable of yielding 3,000 fair impressions; in fact, parts of it are already giving way, and 200 only have been struck off.

"3d. Since Mr. Siebert delivered the plate as being finished, numerous corrections have been made, estimated in the Coast Survey office to amount to seventeen days.

"4th. His charge for 'taking out the degrees and retouching the work,' being considered excessive, was valued, at my request, by an engraver, and corresponding deductions made."

In his action in this matter Lieutenant Smith, who had avowed "that he was not a competent judge of the subject himself," appears to have called to his assistance, in passing judgment upon the work, the opinions of Captain Humphreys as to "style and finish" of the engraving as compared with the standards alluded to in the contract; and upon the opinion of Mr. Benner, printer, as to the number of fair impressions the plate was capable of yielding; and to the opinion of Mr. Dougal, as to the "charge for taking out the degrees and retouching the work."

It is shown by the evidence taken, both on the part of the claimant and of the United States, that Lieutenant Smith misunderstood or was misled by the views and opinions of those whom, without notice to the claimant, he chose to aid him in the duty which, as the successor of Captain Lee, devolved upon him "to be the judge of the

quality of the work and of the paper and printing." This duty of exercise of taste and judgment in the art of engraving the contract imposed upon *him*, Lieutenant Smith, as "the other person" mentioned in the contract "acting in my stead," *i. e.*, in the place of Captain Thomas J. Lee. There is no provision in the contract for the contingency happening, that "the person acting in Captain Lee's stead" should be incompetent to decide himself on the merits of a work of nice art, that he should be governed in the exercise of his power in passing a judgment by the opinions of referees of his own selection, and who acted without notice to or knowledge of the claimant, and to whom, therefore, no opportunity was afforded for explanation or comparison, or any other question that might have been satisfactorily accounted for or justified by the production of the original drawing, and its subsequent numerous alterations and defects, which would have proved to any candid professional mind skilled in the art of the engraver that if there were any defects in the work it was not the fault of the engraver, but the blame, if any, should be placed where it properly belonged, either upon the draughtsmen or the engineers, and that the effort to make a "scape goat" of the engraver could not be borne out by the facts of the case. Two of the three gentlemen named by Lieutenant Smith have been examined in this case, and they prove most conclusively and beyond a doubt that, so far as Lieutenant Smith's action in this matter was based upon their opinions, he was most egregiously in error.

That the plate when it left Mr. Siebert's (the claimant) hands, and was received by Lieutenant Smith, was "capable of yielding three thousand fair impressions," is proved by the testimony of *Henry C. Benner* and of *William H. Dougal* themselves,as well as by every witness examined on the subject. The testimony of said *Benner* is on page 22 of the printed record, and in it he says he saw the plate in Mr. Siebert's possession after it was finished, and took twelve or fifteen impressions from it. "At that time it was capable of yielding *about four thousand good impressions.*"

Mr. *William H Dougal*, at page 43 of his testimony, in speaking of the number of "fair impressions" the plate would yield when it left his hands, said:

"I should judge that it would take the usual number of impressions—say an *average of three thousand.*"

If further evidence should be needed as to the capability of the plate to yield "three thousand fair impressions," it is abundantly shown by the testimony of the following witnesses: *Frederick Courtenay*, engraver, at pages 11 and 12 printed record, says:

"As nearly as I can judge, I should think said plate was capable of giving three or four thousand fair impressions when it passed out of the hands of claimant; and afterwards it might give as many more of an ordinary character."

Henry M. Knight, engraver, at page 14 printed record, says, in answer to the interrogatory, What number of fair impressions was the plate of the Straits of Mackinac capable of giving when it left the claimant's hands?

Answer. "I should say three thousand first class impressions."

Joseph F. Gedney, copper-plate printer, says upon this subject, in his testimony in printed record, page 15, as follows:

First interrogatory by counsel for claimant. How long have you been engaged in the business of copper-plate printing?

Answer. About fourteen years.

Second interrogatory. Have you examined the chart of the Straits of Mackinac engraved on copper by the claimant?

Answer. I have examined it.

Third interrogatory. How many fair impressions was the said plate of the Straits of Mackinac capable of furnishing?

Answer. I should say four thousand fair impressions might have been taken from said plate, if properly used, judging from the copy now before me, and hereunto annexed, (marked Exhibit C.) Sometimes a plate in good condition may be given into the hands of a careless printer, and be much injured by a very few impressions. I have seen instances of the kind, one of which was the plate of Lake Erie, which was sent to me after the plate was supposed to have been much worn, and I printed about six hundred impressions which the officer thought compared favorably with the first. The plate of Lake Erie was sent from the Topographical Bureau to Mr. Dougal, by whom I was then employed, and I made six hundred impressions there.

Samuel D. O'Brien, copper-plate printer, testimony on page 20 of the record says:

He printed impressions from the plate "and considered that plate in good condition." This was prior to its being sent by Lieutenant Smith to Dougal to have additions or alterations made to it. The fact that this plate was fully up to the requirement of the contract as to its capability to yield three thousand fair impressions, is thus established by unquestioned and indisputable testimony, and consequently that ground of objection on the part of Lieutenant Smith is proven to be unfounded and untenable.

An examination of the testimony shows likewise, and with equal distinctness and positiveness, that his other objections, together with the opinions of Captain Humphreys upon the execution of the work, as compared with the standards, were conclusions wholly and entirely erroneous in every respect.

The most distinguished experts in the art of engraving, both in the employ of the government and in private life, have given this matter a thorough examination, and the result of their investigation is before the court in their testimony in the printed record. It is not necessary to cover the pages of this brief with extracts in detail from this mass of testimony, which establishes beyond the possibility of contradiction the fact that the plate of the Straits of Mackinac, when furnished by the claimant, was in all respects what the contract called for; that the bill rendered by the claimant for his work was in every respect correct; that the cost of the work was *less* than is paid for such work in the Coast Survey office; that what to the critical eye of Captain Humphreys seemed, and was considered, a defect in the comparison between this work and the Mobile Bay chart, was no defect at all, but on the contrary, the variance in the appearance of the two, slight as it is, attested the highest skill of the engraver, because of the difference

in the woods of the two maps. "In the maps of Mobile Bay the woods are principally pine; and in the map of the Straits of Mackinac the woods are a mixture of oak, pine, and other forest trees."—(See testimony of *George McCoy*, engraver in the Coast Survey office, and a witness called on behalf of the defendant, page 48 of printed record.)

This witness further states that "it is scarcely possible to draw a comparison between the two, for the reason that the characteristic adopted in the woods of the map of the Straits of Mackinac is different in some respects from that of Mobile Bay." And he adds:

"As far as the insertion of it on the copper goes, it is done as well as the characteristic will admit." "The hill work on the map of the Straits of Mackinac is done as well as it possibly could be."

Surely, it was not to be expected by scientific men and artists, and topographical engineers especially, that the woods on the shores of the Straits of Mackinac would be a fac simile of those on Mobile Bay.

Nature made the trees that grow in these two places, so remote from each other, somewhat different, and the engraver, in following his draught, gave to this portion of his work the characteristic which it required.

Mr. *McCoy* "whose competency to judge of the execution of an engraving" is certified to by Captain *W. K. Palmer*, topographical engineers, assistant Coast Survey in charge of office, states, upon comparing an impression of the chart of the Straits of Mackinac, taken from the plate before it went into Dougal's hands, with an impression taken subsequently, that he can discover no improvement, that "the latter impression is certainly worse," and that he "cannot see that there has been any improvement in those parts marked (Top.) by Dougal."

At page 17, printed record, appears the testimony of *Wilson M. C. Fairfax*, who is now and has been employed in the United States Coast Survey office upwards of fourteen years. He says he has compared the charts of the Straits of Mackinac with those of the Coast Survey as to "style, finish, and workmanship," and *that it compares very well*. He says "I think the style of the *woods is better*, *the sanding excellent*, and the hills first rate. The lettering is as good as the average of the Coast Survey charts, and the lettering compared with that on the chart of the Head of Green Bay is about the same."

Henry M. Knight (page 14 record) states that he "worked on the Mobile plate in the Coast Survey office, and believes the style of impressions from the plate of the Straits of Mackinac to be fully equal to it." That he "did work on both the Mackinac and Mobile plates, and considers the work on one as good as the other."

Frederick Courtenay (page 11 printed record) states that he examined and compared the style of the impressions taken from the plate of the Straits of Mackinac with the Coast Survey maps mentioned in the contract between the claimant and Captain Lee, and "believes it to be equal in every respect to the style of the maps mentioned."

William H. Dougal (page 43 printed record) states that the plate "was not in any way improved by me in general style and finish."

James H. Young, of Philadelphia, engraver, (page 8 printed record,) says: "I have examined the chart of the Straits of Mackinac *minutely*.

The workmanship is good—of high character; the work is good. This kind of chart has not been engraved in this country to any extent, except in the Coast Survey office. There is a great deal of work upon such kind of charts, and they would cost a great deal more than map engravers upon the usual style of work would at first suppose."

Wellington Williams, of Philadelphia, engraver, (page 9 printed record,) says: "I think the work (chart of the Straits of Mackinac) is equal in character to the best of the kind which is done in Washington."

The united opinions of these seven *experts* in the highest branches of the engraver's art needs no comment.

In the face of this testimony of competent and irreproachable witnesses, it would be absurd to deny the correctness of their conclusion and judgment upon the merits of the chart of the Straits of Mackinac as compared with the Coast Survey charts.

One other fact only is needed to be established, and that is also fully and clearly proven, viz: that the bill rendered by the claimant was just, and agreeable to the terms of the contract; and that the sum of seven hundred and thirty-one dollars and eighty-three cents deducted from it by Lieutenant Smith was wholly unjustifiable and without cause, and was done either through prejudice and ignorance, or both.

In relation to the correctness of the account presented by the claimant, see the testimony of *Frederick Courtenay*, (at page 11 printed record.) To the fourth interrogatory, "Are the charges in the bill appended to said contract (marked exhibit B) correct, and in accordance with the terms of said contract between the claimant and Captain Lee?"

Answer. "They are."

Henry M. Knight (at page 14 printed record) testifies thus on this point:

Fifth interrogatory. Are the charges in the bill now shown you, hereto annexed (marked B) reasonable, especially as to the items for taking out degrees, and retouching the work thereby spoiled; additional work and alterations; letters on sailing directions; and notes and additional letters?

Answer. I think the charges are all reasonable.

Wilson M. C. Fairfax (at page 17 printed record) testifies as follows:

Answer. I have been employed in the United States Coast Survey office upwards of fourteen years.

2d interrogatory. Have you knowledge of the cost of engraving Coast Survey maps, and of maps and charts of that kind generally?

Answer. Yes; I have had some years' experience in it.

3d interrogatory. Have you any knowledge of the chart of the Straits of Mackinac, the plate of which was engraved by the claimant? if so, please state your opinion of the value of said plate.

Answer. I have had said chart before me, and have investigated the value of it, and I estimate it at eighteen hundred dollars, without any alterations, at less prices than Coast Survey work. I cannot estimate the amount of alterations made in said chart.

This witness also shows that the cost of the Long Island Sound Coast Survey chart No. 3 was $5,505; lower part of Delaware river and bay, $2,099; Salem harbor map, $3,471; and of Mobile bay, $3,003.

James H. Young (page 8 printed record) says: "I should say that the engraver's work upon this chart, just as I see it, would be worth at least twelve hundred or fifteen hundred dollars, exclusive entirely of any alterations or erasures. For these there would be a further charge, depending upon their character and extent."

Wellington Williams (page 9 printed record) says: "I should judge the whole work to be worth about eighteen hundred dollars, allowing from two hundred and fifty to three hundred dollars for the alterations."

Certainly no stronger evidence of the correctness of Mr. Siebert's bill, as rendered by him, could possibly be adduced than is here presented, and it is not in any respect gainsaid or controverted. This summary of the testimony shows the case of the claimant in its plain and true character, and upon such a state of *proven facts* no argument is required to commend it to the prompt and favorable action of any tribunal before which it may be presented. There can be no difference of opinion among rational minds, acquainted with the facts of this case, as to the hardship and injustice which has been meted out to the claimant by the officials of the government.

The claimant in his amended petition asks your honorable court to allow him interest upon the amount due to him under his contract, and also claims to be allowed the sum of thirty-two hundred and twenty dollars for the immediate and consequential damages he sustained by the action of the agents of the United States in this matter. If there ever has been a case presented to the consideration of the court for the allowance of damages against the government, certainly this is such a case, and a stronger one can scarcely be imagined. The items making up the sum claimed as damages are set out in the amended petition, (page 6 printed record,) and it is not deemed necessary to repeat them here.

R. K. SCOTT,
Attorney for petitioner.

IN THE COURT OF CLAIMS.

SELMAR SIEBERT *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for a balance due on a contract for engraving.

AVERMENTS IN THE PETITION.

1. That the petitioner entered into a contract to engrave a chart of the Straits of Mackinac for the War Department, which contract was reduced to writing.

2. That it was verbally altered, extending the time of performance.

3. That the contract was fulfilled on the part of the petitioner.

4. That under the contract he was entitled to receive the sum of $1,764 75; but that the department paid him only $1,032 92, leaving due him $731 83.

5. By an amendment to the petition the sum of $3,220 is claimed for a breach of said contract on the part of the United States, as immediate and consequential damages, but no items are specified.

6. It is not averred that the last mentioned sum has ever been demanded of the War Department.

MATERIAL FACTS FOUND IN THE RECORD.

1. That petitioner and Captain Lee, of the Topographical Bureau, on the 21st of August, 1854, entered into a written contract whereby the former agreed to engrave, on copper, a chart of the Straits of Mackinac, in which was specified the quality of the work and the price to be paid therefor.—(R., pp. 4, 5.)

2. The contract was subject to conditions. The proof impression was to correspond in every respect to the drawing, and the style and finish to correspond with certain specified sheets of engraving.

The plate was to be so engraved as to be capable of yielding three thousand impressions.

The officer representing the United States was "to be the judge of the quality of the work."—(R., p. 5)

"After the final corrections are made, the engraving approved by me, and one hundred impressions delivered, together with the plate, if required, you (the contractor) are to receive the full amount of all charges, as above."—(R., p. 5.)

3. There is no evidence that the time within which the contract was to be completed was extended.

4. The work was not done in conformity with the contract, nor so as to be approved by said officer, according to the terms of the agreement.

The deposition of Dougal points out defects in the plate, and additions and corrections made by him.—(R., p. 42.)

5. The officer in charge judged of the quality of the work and decided that the style of finish did not come up to the standards provided in the contract.—(*Capt. Smith's letter, R., p.* 35.)

6. The officer decided that the plate would not produce three thousand fair impressions.—(Id. R , p. 35.)

7. Corrections had to be made in the plate occasioned by the fault of the petitioner.—(*Capt Smith's letter, R., p.* 36.)

8. The officer made such deductions as he thought ought to be made, and paid him all he supposed he was entitled to and took his receipt in full.—(R., p. 39.)

9. The claim for consequential damages has not been presented to the War Department for payment.

10. No evidence has been taken to show the amount of the consequential damages referred to and claimed under the amendment of the petition.

LEGAL PROPOSITIONS.

FIRST. *The complainant not having fulfilled his contract is not entitled to recover.*

The petitioner avers that he fulfilled the contract on his part; but the averment is not sustained by the proof. There is no evidence showing that he did, in fact, fulfil the contract in all its parts. On the contrary, the evidence is clear and conclusive that in several particulars the work did not correspond to the contract. There were palpable and positive deficiencies, which were never supplied or corrected by petitioner. He has failed to make good his averment that he had performed the obligations of the contract and therefore cannot recover.

SECOND. *The contract having provided that the officer of the Topographical Bureau should be the judge of the quality of the work, his decision is final, and no evidence can be admitted questioning the correctness of his decision.*

The fourth condition of the contract provides that the officer contracting on behalf of the United States for the Topographical Bureau should be the judge of the quality of the work. His judgment was made the standard. That having been agreed upon, no other evidence can be given of its quality against his decision. In the present case the officer adjudged that the style of the work was not in conformity with the contract, and that concludes the matter. He decided the work had not been done as required by the contract, and if it was not then the claimant cannot recover. He must prove performance on his part before he can claim performance on the part of the government. Not having shown this, as to the style of the work, as required in the written obligation, he cannot recover.

THIRD. *The contract having provided that the engraving should be approved by the officer before the claimant should be entitled to any pay, and he not having shown such approval, he cannot recover.*

The sixth condition of the contract provides that after the final corrections are made, and "the engraving approved by me," (the officer,) "the contractor is to receive the amount of his charges."

There is no evidence that this approval was ever made, and, consequently, the claimant is not entitled to receive payment.

Instead of approving, the officer disapproved the plate, because it did not conform to the contract. Until the claimant produces this approval he cannot recover, even if the work was well performed. If he had produced the approval required by the contract the department would undoubtedly have paid all that the contract provided should be paid. He cannot recover in this court when he had not furnished to the War Department evidence showing him entitled to receive from that department.

The claimant has also failed to show that he has delivered the one

hundred impressions from the plate, as required by the sixth condition as a preliminary to payment, and therefore has no right to demand payment, either of the War Department or in this court.

From all the evidence in the record it is pretty certain that he has received as much as he ought to receive for what he did.

R. H. GILLET,
Solicitor.

Dated January 21, 1860.

IN THE COURT OF CLAIMS,

May 1, 1860.

SELMAR SIEBERT *vs.* THE UNITED STATES.

HUGHES, J., delivered the opinion of the court.

A written contract was made by Captain Thomas J. Lee, of the army, on the part of the United States, with Selmar Siebert, the petitioner, for certain engraving, the particulars of which fully appear in the agreement itself, which is as follows:

WASHINGTON, *August* 21, 1854.

SIR: I accept your offer to engrave on copper a chart of the Straits of Mackinac at the following rates, viz:

Copper plate - - - - - - -	$56 00
Engraving all the topography, as also the title and all the lettering on the chart, except the sailing directions and notes - - - - - - - -	1,150 00
Sailing directions, at $1 50 per 100 letters of whatever kind.	
Printing, per hundred copies - - - -	12 00
Paper, per hundred copies - - - -	10 00

Subject to the following conditions, viz: 1st. A proof impression, in every respect corresponding to the drawing, and comparing in style and finish of topography to the upper sheet of the Coast Survey map of Mobile Bay, of sanding to Coast Survey sheet No. 2 of Long Island Sound, and of lettering to the War Department map of Head of Green Bay, is to be delivered to me, or other person acting in my stead, before the first day of April, 1855, and if necessary, you are to wait one month before the final corrections to the proof are made.

2d. That the plate is to be capable of yielding three thousand fair impressions.

3d. That I do not engage to have any certain number of impressions taken beyond three hundred; but that the plate is to be delivered into my hands at any time, and that you engage to print as many copies as may be required within the six months succeeding the delivery of the plate.

4th. That I am to be the judge of the quality of the work and of the paper and printing.

5th. That all additions and corrections, other than those caused by your own fault or neglect, will be paid you at Coast Survey rates, according to a schedule in my possession for your inspection; the day's work to be estimated at six dollars.

6th. After the final corrections are made, the engraving approved by me, and one hundred impressions delivered, together with the plate, if required, you are to receive the full amount of all charges, as above, but no part payment will be made.

Yours, respectfully,

THOS. J. LEE,
Cap. Top. Eng.

Mr. SELMAR SIEBERT.

I accept the above conditions. Washington, August 21, 1854.
SELMAR SIEBERT.

The petitioner claims to have performed his contract, except so far as performance was waived or prevented by those acting for the government. He alleges that he completed the engraving and delivered it to Lieutenant M. L. Smith, the successor in office of Captain Lee; and that it was accepted and made use of by the United States, and is now held and owned by them. He complains, that after accepting his work, only part of his account therefor, at the contract price, was paid—the residue, amounting to seven hundred and thirty-one dollars and eighty-three cents, being withheld on account of alleged imperfections in the engraving. He sued, originally, for the sum so withheld. In an amendment to his petition he claims interest on said sum and certain special damages, which will be noticed hereafter.

The claim is resisted on the ground that the engraving made and delivered was inferior in character to the standards of excellence adopted by the contract, and it is insisted that the petitioner has already received as much as he ought to have.

From the facts in evidence it appears, that after entering into the foregoing contract, the petitioner went to work to engrave upon copper the desired map of the Straits of Mackinac, from a drawing prepared by one Boschke, a civil engineer in the Coast Survey, employed as draughtsman, in this instance, by the Topographical Bureau. As the work progressed, alterations were made in the drawing which required corresponding alterations in the engraving, causing delay and much additional labor, and retarding the completion of the map.—(See Courtenay's deposition, printed record, p. 11; Knight's, ibid. p. 14; Boschke's, pp. 18, 19. See also Record, p. 25.)

In December, 1855, a proof impression from the yet unfinished plate came to the hands of Lieutenant Smith, sent, as the petitioner alleges, merely for examination and correction of the work done, before giving the plate its last finish.—(Record, p. 25.) The evidence does not show for what purpose or under what circumstances this proof-sheet was delivered, though a good deal is said on that subject in the letters of the petitioner. Taking this proof impression as the basis of his judgment, Lieutenant Smith condemned the work, and transmitted to the claimant the following letter:

WASHINGTON CITY, D. C.,
December 4, 1855.

DEAR SIR: The proof-sheet of Straits of Mackinac, sent me some weeks since, has undergone examination by Mr. Boschke, and has been submitted also to Capt. Macomb for inspection. The conclusion come to both by Captain Macomb and myself, is:

1st. That the conditions of the contract as regards style of execution of the engraving have not been fulfilled.

2d. The original is not correctly represented by the proof either in the outline of shore or position of soundings, not mentioning many other errors that exist.

The extra work on the plate, caused by changing the position of the meridian lines, it is proper should be paid for, but the proof, as represented by the proof sent, is rejected.

I am, sir, yours,

M. L. SMITH,
Top. Engineers.

MR. SIEBERT

This is the first appearance of misunderstanding or difference between the parties. From this point it continues to the end. It would seem that this condemnation of the petitioner's engraving should have terminated proceedings under the contract, and left Siebert with his rejected plate on his hands to seek his remedy for its non-acceptance. The claimant asserts, (Record, p. 26,) that "corrections and alterations on the original drawing, and consequent ones on the plate, went on as before," and the evidence supports his assertion. On the 15th February, 1856, in reply to an application from the claimant for such additions to the drawing as would enable the engraver to "add the positions of the light-houses," Lieutenant Smith addressed Mr. Siebert as follows: "Sir: There is nothing to be put upon the plate other than what you have been in possession of for many months. The small table headed light-houses, please leave as it is"

The engraving having been at length completed so far as the state of the drawing to be copied would permit, the petitioner sought to have it examined, approved, and accepted; while Lieutenant Smith, avoiding any express approval of it, sought to possess himself of the plate as well as of the drawing from which it was made, and required its delivery to him for examination, declining to inspect it at the petitioner's place of business. Siebert, (Record, p. 27,) in a letter to Lieutenant Smith, without date, informs him that the work is ready for examination, and invites him to appoint a time when he will be present at petitioner's house while competent persons inspect it; after which he declares he will be willing to deliver up what "you (Smith) were asking for," by which we understand the drawing, not the plate. Lieutenant Smith responds as follows:

BUREAU TOPOGRAPHICAL ENGINEERS,
Washington City, D. C., March 1, 1856.

MR. SIEBERT: Having announced to me that the plate for engraving chart of Straits of Mackinac is ready for examination with reference

to the final corrections mentioned in the contract for said plate, I take occasion, in reply, to inform you that I am ready to examine it agreeably to contract, which requires the work to be delivered to me for that purpose.

On Monday, the 3d instant, (if the work is not brought here,) I will send the messenger of the office for it.

Very truly, &c.,

M. L. SMITH,
Assistant, Topographical Bureau.

Siebert in a note to Smith, dated March 3, 1856, informs him that so soon as the examination of the work by persons of skill has taken place at his own atelier, viz: in a day or two, he will send him the drawing, and also "comply with expressed wishes," by which we understand send *the plate* for examination. The next communications between these parties are the following:

WASHINGTON, *March* 5, 1856.

SIR: Misled by imperfect proof-sheets, and overlooking the fact that the original drawing of the chart Straits of Mackinac is defective, you have, in a letter dated December 4, 1855, peremptorily rejected my work. Better impressions have since come to your hands, and it cannot be difficult for you to decide whether the plate as it now stands is satisfactory to you or otherwise. The examination of drawing, tracings, plate, &c., as spoken of, has taken place, and a protocol signed agreeably by the judges called together to decide upon the merits of either work. Satisfied as I am with the results of this investigation, I hasten to bring you in possession of the original drawing. The plate, of course, I cannot deliver up unto you before you have not given a written opinion that it meets your approbation. A "*rejected*" plate would be of no value to you, and as the impressions in your possession must enable you to decide otherwise, I have to wait for a further expression on your part, before I give up *what you are not willing to pay for, according* to your note of the 4th December last. Your kind decision is expected at an early day. Be pleased to acknowledge, in writing, the deliverance of the drawing.

Yours, most respectfully, obedient servant,

SELMAR SIEBERT.

Lieut. M. L. SMITH,
Topographical Engineers.

WASHINGTON, *March* 6, 1856.

SIR: The original drawing of the Straits of Mackinac was brought to my office this morning very much defaced.

Very truly, yours,

M. L. SMITH,
Top. Engineers.

MR. SIEBERT.

On the 18th of March Siebert writes to Smith, (see Record, p. 29,) complaining that he has not answered the more important parts of his letter of the 5th of March, though fourteen days had elapsed. He declares himself at a loss to see how he can come to a settlement with Lieutenant Smith, and proposes to transmit the whole subject to the Attorney General. He offers, however, if Smith will examine the work, to send him a plaster cast of the plate for that purpose. Here ends the written correspondence between these parties so far as disclosed in evidence.

Samuel D. O'Brien, whose deposition is found at page 20 of the record, after stating that he was a copper-plate printer, and that the petitioner had sent the plate (Straits of Mackinac) to him to have some impressions taken from it, deposes as follows:

"4th interrogatory. Do you know whether Captain Smith or Captain Palmer endeavored to obtain possession of the plate while it was in your hands?

"Answer. Captain Smith and Captain Palmer called on me at the time above alluded to for the purpose of retaining the plate in my hands, but it had been sent away within an hour previously. Captain Smith requested Captain Palmer, who was in charge of the office at that time, should the plate again come into my possession, to have me retain it; whereupon Captain Palmer gave me a verbal order, should the plate come there again, to deliver it to no one without a special order from either himself or Captain Smith. I was then in the employment of the Coast Survey office, and was subject to the orders of Captain Palmer."

The claimant delivered the plate to Lieutenant Smith, and that officer received it, but neither the precise time of that act nor its attendant circumstances are shown by any direct evidence; but in a letter to Colonel Abert, dated April 12, 1856, Lieutenant Smith states that he had given the plate a final examination on the 11th day of that month.—(Record, p. 32.) Again, under date of May 29, 1856, he says: "Since Mr. Siebert delivered the plate as finished, numerous corrections have been made," &c.—(P. 36.) The petitioner, in a letter to the Secretary of War, dated May 13, 1856, says it is nearly two months since he delivered the plate to Lieutenant Smith.—(Record, p. 34.) It may well be inferred from these circumstances that the plate passed into the possession of the government at least as early as the 11th day of April, 1856.

Lieutenant Smith, after the plate came into his possession, caused some work to be done on it by an engraver named William H. Dougall, at an expense of $52 50; but that the corrections and additions made by him were rendered necessary by the fault of the petitioner, is not proven—it is even left in doubt whether they impaired or enhanced the value of the plate.—(See Dougall's dep., pp. 41, 42, 43, 44, 45; McCoy's dep., p. 48; Benner's, p. 22; O'Brien's, p. 20.) It is to be observed that under the contract the petitioner had the right to do all the necessary corrections, and his work could not be taken from him, under the contract, and alterations made by another workman thereon at his expense.

On the 29th of May, 1856, some time after the plate had been delivered, Lieutenant Smith, in a letter to his superior officer, (Record, p. 35,) pointed out the alleged deficiencies in the engraving on which he founded the proposed deduction from the compensation claimed by the petitioner at the rates specified in the contract. In his letter of April 12, 1856, addressed also to his superior officer, he says: "The errors and corrections required are in such a shape that they can be submitted for inspection whenever required." But it nowhere appears that these errors were submitted to the inspection of the petitioner, either when the plate was delivered, or within a reasonable time thereafter, nor was there a return of the plate, or an offer to return it. Under the contract the petitioner was the proper person to make all necessary corrections, and to receive additional pay for those not springing from his own fault; the government having the right to reject his work absolutely, but not to accept it in part and reject it in part.

Lieutenant Smith informs Colonel Abert (p. 36) that "these corrections arose from his (the claimant's) own fault and neglect." But the evidence of Dougall, the engraver who made the corrections at the instance of Lieutenant Smith, does not sustain this assertion. He says, (p. 42,) "The corrections were indicated by tracings furnished me by the bureau, which tracings were made by Mr. Boschke, the draughtsman of the bureau. I had no communication with Mr. Boschke, but Captain Smith, who was then in charge of the bureau, represented to me that these tracings which I now exhibit were taken by Mr. Boschke from the original map, and that the red lines indicated the departures from the original in the engraved chart." From this it appears that the knowledge of the witness on that point was second-hand, and rested upon the representation of Lieutenant Smith. It is mere hearsay. It would have been more to the purpose to have furnished the sworn statement of that officer.

We cannot say from the evidence that the corrections and additions were not rendered necessary by errors in the original drawing furnished to Siebert, and copied by him upon the plate.

The officers of the government retained the plate, and had some fourteen hundred impressions taken from it. It has been electrotyped at an expense of about one hundred dollars, and by that means an indefinite number of impressions can be taken.—(Pages 22, 23.)

On the 13th of May, 1856, Mr. Siebert addressed a letter to the Secretary of War, complaining that although the plate had been delivered nearly two months, Lieutenant Smith disregarded his solicitations, and failed to pay his account, but was making use of the plate in the mean time for the benefit of the United States.—(Record, p. 35.)

The account as rendered by Mr. Siebert amounted to $1,764 75.

In his letter of the 29th of May to Colonel Abert, his immediate superior, Lieutenant Smith stated that he was willing to pay the petitioner $1,032 92, and proposed to deduct from his account as rendered $731 92, on account of alleged non-compliance with the contract on the part of Siebert in the following particulars. I quote from his letter:

"1st. In reference to 'style and finish,' the standards alluded to in the contract are not, in my opinion, come up to. * * * * *

"2d. The plate is judged not capable of yielding 3,000 fair impressions; in fact, parts of it are already giving way, and two hundred only have been struck off. * * * * *

"3d. Since Mr. Siebert delivered the plate as being finished, numerous corrections have been made, estimated in the Coast Survey office to amount to seventeen days. These corrections arose from his own fault and neglect, consequently are chargeable to him.

"4th. His charge for 'taking out the degrees and retouching the work,' being considered excessive, was valued, at my request, by an engraver, and corresponding deductions made."—(Record, p. 35.)

The Secretary of War having declined to "intervene between the contracting parties," (see Record, p. 38,) the petitioner received of Lieutenant Smith, "under protest," $1,032 92.—(See his receipt, Record, p. 39.)—He afterwards instituted this proceeding to recover the balance of his claim which was withheld.

Upon the question of the sufficiency of the plate, under the contract, the evidence is as follows:

1. To prove deficiency.

The deposition of William H. Dougall.—(Printed Record, pp. 41 to 45.) This witness worked on the plate, under the direction of the Topographical bureau, after it left the hands of Siebert. He deposes that he improved part of the topography slightly, not the sanding nor the lettering, nor the general style and finish. Made additions to what were represented by Captain Smith to be departures from the original map. Compares impressions from Siebert's plate with map of Mobile Bay, (one of the standards referred to in the contract,) and thinks there is a difference as to general style and finish in favor of the Mobile map; cannot specify value of difference, and thinks it might arise almost entirely from a difference in style of the original drawings of the two charts. Thinks the sanding on Siebert's plate inferior to the extent of *one-quarter* to that on Coast Survey sheet No. 2 of Long Island Sound, (another standard.) Thinks lettering on Siebert's plate fully equal to that on War Department map of the Head of Green Bay, (another standard.) Says the same hand executed both. Thinks the plate, when finished, capable of yielding usual number of impressions, say an average of three thousand.

The deposition of George McCoy.—(Rec., p. 48.) As to comparison of Siebert's work with map of Mobile Bay, this witness says:

"It is scarcely possible to draw a comparison between the two for the reason that the characteristic adopted in the woods of the map of the Straits of Mackinac is different in some respects from that of Mobile Bay. In the map of Mobile Bay the woods are principally pine, and in the map of the Straits of Mackinac the woods are a mixture of oak, pine, and other forest trees. As far as the insertion of it on the copper goes, it is done as well as the characteristic will admit. The hill work on the map of the Straits of Mackinac is done as well as it possibly could be."

He thinks the sanding in the map engraved by petitioner not equal to that in map No. 2 of Long Island Sound, and that the difference is probably produced by the imperfection of *the impression* of the Straits of Mackinac shown to him. Has not seen the Green Bay map to compare with this, but thinks the lettering on this (Siebert's) a good average specimen of map lettering.

Upon comparison of an impression taken from the plate in contr--versy before it went into the hands of Dougall with one taken after he had worked on it, says there is no improvement by Dougall perceptible from those impressions.

In addition to the above evidence, the printed record contains a letter from Captain Humphreys, one from Henry Benner, and one from Dougall, to Lieut. Smith, as to the sufficiency of the plate, (pp. 36, 37.) These letters are not competent proof of the facts stated in them, but merely of the basis on which Lieut. Smith in part rested the conclusions announced in his letter of May 29 to Col. Abert. A reference to the respective depositions of Benner and Dougall will serve to explain their letters.—(Record, pp. 22 and 42.)

2d. Evidence to prove the sufficiency of the engraving.

The deposition of Frederick Courtenay.—(Rec., p. 11.) This witness deposes that he worked on the engraving together with Siebert and others. He was occupied some twenty-five or thirty days in making part of the alterations on the plate, and in correcting errors which had been made in the original drawing by the draughtsman, also in restoring the work injured or destroyed by those corrections. He states that he has compared impressions taken from the engraving with the standards adopted in the contract, and that they were equal to those standards in every respect He states that the plate, when it passed out of the claimant's possession, was capable of yielding three or four thousand fair impressions.

He further deposes that the charges in the bill rendered by the claimant were reasonable and in conformity to the rates established by the written contract.

The deposition of Henry M. Knight.—(Record, pp. 13, 14.) This witness testifies that he was employed on the engraving of the Straits of Mackinac, together with Siebert and others; also that he was one of the engravers who made the plate for the map of Mobile Bay, one of the tests referred to in the contract. He says that the work done on the engraving of the Straits of Mackinac was fully equal to that on the Coast Surveys charts of Long Island Sound No. 2 and Mobile Bay, and that the plate of the former, when it left the claimant's hands, was capable of yielding "three thousand first class impressions." He also deposes that corrections, alterations, and restoring work erased, were required to be done on the plate in consequence of incorrectness in the drawing furnished by the government officers.

The deposition of Joshua F. Gedney.—(Rec , p. 15.) He states that he is a printer, and had examined the plate of the Straits of Mackinac, and that it was capable, if properly used, of yielding four thousand fair impressions, judging from the copy shown to him.

The deposition of Wilson Fairfax.—(Record, p. 16.) This witness testifies that he has estimated the value of the engraved plate of the

Straits of Mackinac, and considers it worth eighteen hundred dollars, exclusive of alterations, at less prices than Coast Survey work. He further says that it compares very well as to style, finish, and workmanship with the maps of the Coast Survey; that the style of the woods on it is better, the sanding excellent, the hills first rate, and the lettering as good as the average of the Coast Survey charts.

He has been in the employ of the Coast Survey office fourteen years.

The deposition of Samuel D. O'Brien.—(Record, p. 20.) Witness deposes that he is a copper-plate printer, and that the claimant sent the plate of the Straits of Mackinac to him to have some impressions taken from it, and at that time the plate was in good condition.

The deposition of Henry C. Benner.—(Record, p. 22.) This witness is a copper-plate printer, and testifies that he saw the engraving in Siebert's possession after it was finished, and took twelve or fifteen impressions from it. At that time it was capable of yielding about four thousand good impressions. About two or three months after that the said plate was sent to him from the Topographical bureau to print from. After printing about two hundred impressions, being asked by Captain Smith how many impressions the plate would stand, thinks he told him 1,800 or 2,000. The numerous alterations which had been made in it since it was first in his hands had so injured it that it was not capable of yielding as many impressions as when he first saw it.—(See his letter to Captain Smith, Record, p. 37.)

The deposition of Albert A. Boschke.—(Record, p. 18.) The witness states that he was the draughtsman of the chart from which the engraving was made, and that several changes in the work were made by the officer in charge of it, which required corresponding alterations and revisions of the engraving then in progress.

The deposition of James H. Young.—(Record, p. 7.) The witness, after an examination of the chart, pronounces the workmanship of high character, and estimates the engraver's work upon it, exclusive of alterations, to be worth at least twelve hundred or fifteen hundred dollars.

The deposition of Wellington Williams.—(Record, p. 9.) This witness estimates the value of the work done on the plate at eighteen hundred dollars, inclusive of alterations.

All these witnesses are experts in the matters of art to which their testimony is directed.

Upon consideration of this testimony, there is a very clear and decided preponderance of evidence in favor of the petitioner, as to the conformity of his work in style and finish to the standards adopted by the contract. Besides, the acceptance of the engraving by the government must conclude all controversy on every point relating to its sufficiency. The evidence clearly shows that the petitioner throughout insisted upon the acceptance of the work in discharge of the contract and at the contract prices, and the plain duty of the officer representing the United States was, either to reject it absolutely, or to receive it and pay for it. The stipulation in the agreement, to the effect that Captain Lee was "to be the judge of the quality of the work and of the paper and printing," gave him an unrestricted power to reject the work, and in case he did so, left the petitioner without

remedy. But it was a power to be exercised before the delivery of the engraving, not afterwards. It was a power to condemn and reject, not a power to condemn and receive the work.

Captain Lee could not take the engraved plate prepared by the petitioner at any other price than that specified in the contract without his consent. There is no evidence of fraud or of latent defects in the plate discovered after delivery.

Both parties have construed this contract as substituting the successor in office of Captain Lee in his place as to the right to judge of the quality of the engraving as well as in other respects, and we therefore make no inquiry as to the true construction of the agreement on that point.

But the contract did not, as claimed by Lieutenant Smith, require the plate to be delivered to him for final examination. It only required the delivery of a proof impression for final corrections; the plate was not to be delivered unless approved.

It is objected that the petitioner failed to complete the engraving by the first day of April, 1855. The evidence shows that much delay was caused by alterations and corrections in the drawing furnished by the government, requiring corresponding changes in the engraving; and to this cause, in a great degree, the delay may well be attributed. By this, and by not insisting on the time, (for the evidence discloses that it was not treated as essential nor insisted upon,) and by accepting the plate long after the day mentioned, that objection is answered.

In his amendment to the petition the claimant demands special damages for the injury to his reputation, business, &c. Such a claim is wholly inadmissible, even if proved; but there is no evidence to support it. It appears that after the plate left the hands of the petitioner additional work was done on it to the amount of $52 50, a portion of which was from corrections and additions to the drawing. Under the contract Siebert was entitled to have done this work, and so much of it as is clear profit he would be entitled to recover here, but the evidence does not furnish the means of ascertaining the amount. So, he is entitled to the profits of printing three hundred impressions from his plate, but we are without means to ascertain how much that would be.

The damages due the claimant upon the evidence submitted is seven hundred and thirty-one dollars and eighty-three cents, being the amount withheld from him in the payment of his account as rendered. Upon this sum he is entitled to recover interest from the day when the engraved plate passed into the possession of the United States, which was not later than the 11th of April, 1856.

It is the opinion of the court that the petitioner ought to recover the sum of seven hundred and thirty-one dollars and eighty-three cents, with interest thereon at the rate of six per cent. from the 11th day of April, 1856. A bill will be reported to that effect.

IN THE COURT OF CLAIMS.

May 1, 1860.

SELMAR SIEBERT *vs.* THE UNITED STATES.

LORING, J.

I dissent from so much of the opinion of the court as awards the petitioner interest.

From the foundation of the government the payment of interest on such contracts as this has been in the discretion of Congress to allow or refuse it; and there has been no law or usage creating any strictly *legal obligation* for such interest on the part of the United States; parties deal with the government on this state of facts, and it enters into their contracts as a part of their terms.

I think this state of things can now be altered only by legislation, and that it is not done by the statute constituting this court.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 266.

BREVOORT & HOUGHTON.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

BREVOORT & HOUGHTON *vs.* THE UNITED STATES.

1. The petition of the claimants as amended.
2. Evidence of the claimants transmitted to the House of Representatives.
3. Evidence on the part of the government transmitted to the House of Representatives.
4. Claimants' brief.
5. United States solicitor's brief
6. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the judges of the Court of Claims:

Your petitioners, Elias Brevoort and Joab Houghton, respectfully represent: That the United States are indebted to them in the sum of ten thousand eight hundred and ninety-two dollars, and thirty-one cents on a contract made by the petitioners with the United States, in the words following, and with the parties therein named, duly authorized agents of the United States.

(Copy.)

Agreement of contract made this second day of July, A. D. 1854, between Elias Brevoort and Joab Houghton, of the city of Santa Fé, Territory of New Mexico, of the one part, and William A. Miller, postmaster at the city of Santa Fé, of the other part, as follows, to wit: Said Brevoort & Houghton contract to and with the said William A. Miller, postmaster aforesaid, to carry the United States mail monthly, by way of El Paso, between Santa Fé, New Mexico, and San Antonio de Bexar, in the State of Texas, upon the same conditions, and for the same consideration as specified in a certain contract made by the Post Office Department of the United States with Henry Skillman, for the year ending on the last day of June, A. D. 1854, and to continue said contract until such time as the same shall be received at Santa Fé, or San Antonio aforesaid, by any contractor or contractors who shall have taken the contract for said mail for the year beginning on the first day of July, A. D. 1854. And the said William A. Miller, postmaster as aforesaid, contracts to and with the said Elias Brevoort and Joab Houghton, by the authority in him vested by the instructions of the Postmaster General of the United States, in the case of failure on the part of any contractor or contractors to receive the said mail at Santa Fé, or San Antonio aforesaid, on the days designated in their said contracts, to pay, or cause to be paid by the Post Office Department of the United States, to the said Brevoort & Houghton, in consideration of carrying and delivering said mail as aforesaid, the compensation named in the said contract with the said Henry Skillman, or at that rate, so long as the said Brevoort & Houghton shall carry said mail and comply with obligations of said contract.

In witness whereof, the parties hereto have placad their hands and seals on the day and year first above written.

ELIAS BREVOORT. [L. S.]
J. HOUGHTON. [L. S.]
W. A. MILLER, [L. S.]
Postmaster, Santa Fé, New Mexico.

In the presence of—
C. H. MENITT.
WILLIAM IREND.

And your petitioners aver that the rate of pay, under the above contract, was twenty-eight thousand dollars per annum, which sum was increased by act of 3d March, 1855, for said service on said route from the 18th day of August, 1854, for one year. They further aver that they performed the services above contracted for, for six months, and were entitled to receive therefor the sum of sixteen thousand seven hundred and fifty dollars; but they have been paid only for two and a half months' service, the sum of five thousand eight hundred and fifty-eight dollars and sixty-nine cents, under the action of the Post Office Department, on their account. There is still due them a

balance of eight thousand one hundred and forty-two dollars and thirty-one cents, for which they bring this suit.

Your petitioners further state that they are the sole owners of the claim, and that no other persons are interested therein.

HOUGHTON & BREVOORT,
By JOHN O. SARGENT,
Their Counsel.

John O. Sargent, counsel of the claimants, being duly sworn, deposes and says, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

Sworn before me this day of , 1856.

IN THE COURT OF CLAIMS.—No. 530.

BREVOORT & HOUGHTON *vs.* THE UNITED STATES.

John S. Watts, one of the attorneys of the petitioners, moves the court for leave to amend the petition by inserting in the 2d [line] of the printed petition $10,892 31, as the amount claimed instead. And on page 2, line 2d, of the printed petition, by the insertion of the following words, to wit: "which sum was increased by act of 3d March, 1855, for mail service on said route from the 18th day of August, 1854, for one year." And amend the 4th line on page 2 by inserting $16,750 instead of fourteen thousand dollars.

JOHN S. WATTS.

Leave granted, April 14, 1859.

AUDITOR'S OFFICE,
Post Office Department, April 16, 1858.

SIR: In reply to your letter of the 12th instant I enclose you a statement of the account of Messrs. Brevoort & Houghton.

Respectfully,

THOS. M. TATE,
Auditor.

JOHN O. SARGENT, Esq.,
63 *Wall street, New York.*

OFFICE OF THE AUDITOR OF THE TREASURY
For the Post Office Department, February 12, 1858.

I, Thomas M. Tate, Auditor of the Treasury for the Post Office Department, do hereby certify the attached to be a true and correct

statement of the account of Brevoort & Houghton, for special service on route 12900, as audited and adjusted at this office.

In testimony whereof, I have hereunto signed my name and caused [L. S.] to be affixed my seal of office, at the city of Washington, this twelfth day of February, A. D. 1858.

THOS. M. TATE,
Auditor of the Treasury for the Post Office Department.

Brevoort & Houghton, special service, in account with the United States.

Dr.			Cr.		
1855.			1855.		
Jan. 25	To warrant No. 6035, in favor of H. G. Fant, assignee.....	$4,195 11	Jan. 19	By recognized service on route 12900, from Santa Fé to San Antonio, from July 1 to	
1856.					
March 4	To warrant No. 3661, in favor of H. G. Fant, assignee.....	1,663 58		August 31, 1854.....	$4,195 11
			1856.		
			Feb. 26	By recognized service on route 12900, from Santa Fé to San Antonio, during September, 1854	1,663 58
		5,858 69			5,858 69

POST OFFICE DEPARTMENT.

I certify that the annexed is a true copy of a contract with Elias Brevoort and Joab Houghton, for carrying the mail of the United States on route No. ———, from Santa Fé, New Mexico, to San Antonio, De Bexar, Texas, now on file in this department.

In testimony whereof, I have hereto set my hand, and caused the [L. S.] seal of the Post Office Department to be affixed, at the General Post Office, in the city of Washington, this 13th day of April, A. D. 1857.

HORATIO KING,
Acting Postmaster General.

Agreement of contract made this second day of July, A. D. 1854, between Elias Brevoort and Joab Houghton, of the city of Santa Fé, Territory of New Mexico, of the one part, and William A. Miller, postmaster at the city of Santa Fé, of the other part, as follows, to wit: Said Brevort & Houghton contract to and with the said Wm. A. Miller, postmaster aforesaid, to carry the United States mail monthly by way of El Paso, between Santa Fé, New Mexico, and San Antonio De Bexar, in the State of Texas, upon the same conditions and for the same consideration as specified in a certain contract made by the Post Office Department of the United States with Henry Skillman, for the year ending on the last day of June, A. D. 1854, and to con-

tinue said contract until such time as the same shall be received at Santa Fé, or San Antonio aforesaid, by any contractor or contractors who shall have taken the contract for said mail for the year ending on the first day of July, A. D. 1854; and the said William A. Miller, postmaster as aforesaid, contracts to and with the said Elias Brevoort and Joab Houghton, by the authority in him vested by the instructions of the Postmaster General of the United States, in the case of failure on the part of any contractor or contractors to receive the said mail at Santa Fé, or San Antonio aforesaid, on the days designated in thieir said contracts, to pay, or cause to be paid by the Post Office Department of the United States, to the said Brevoort & Houghton, in consideration of carrying and delivering said mail aforesaid, the compensation named in the said contracts with the said Henry Skillman, or at that rate, so long as the said Brevoort & Houghton shall carry said mail and comply with the obligations of said contract.

In witness whereof the parties hereto have place, their hands and seals on the day and year first above written.

ELIAS BREVOORT. [L. S.]
J. HOUGHTON. [L. S.]
W. A. MILLER, [L. S.]
Postmaster, Santa Fé, New Mexico.

In the presence of—
C. H. MEINTT.
WILLIAM DREW.

POST OFFICE DEPARTMENT, *December* 10, 1857.

It is hereby certified that the mail pay of Henry Skillman, under the contract which expired on the 30th of June, 1854, for conveying the mails monthly each way, on the route from Santa Fé to San Antonio, was $28,000 per annum.

AARON V. BROWN,
Postmaster General.

Route 12900.—*Santa Fé to San Antonio.*

MONTHLY REGISTER—POST OFFICE AT SAN ANTONIO.

Contract time of arrival 25th of every month.
Contract time of departure 1st of every month.

JULY, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known	Hour of departure.	Cause of detention.
Saturday	1	.....	Old contractor.....	8 p. m.	Skillman.
Tuesday.....	25	7 p. m.	Old contractor.....	.....	Skillman.

Certified to be correct by—

JOHN BOWEN, *Postmaster.*

AUGUST, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known.	Hour of departure.	Cause of detention.
Tuesday.....	1	.....	.....	8 p. m.	New contractor.
Sunday.....	27	11 a. m.	Henry Skillman...		

Certified to be correct by—

JOHN BOWEN, *Postmaster*.

SEPTEMBER, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known.	Hour of departure.	Cause of detention.
Friday.....	1	.....	.....	8 p. m.	New contractor.
Friday.....	29	3 p. m.	.....	.....	Old contractor.

Certified to be correct by—

JOHN BOWEN, *Postmaster*.

OCTOBER, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known.	Hour of departure.	Cause of detention.
Sunday.....	1	.....	.....	8 p. m.	
Tuesday.....	26	7½ a. m.			

Certified to be correct by—

JOHN BOWEN, *Postmaster*.

NOVEMBER, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known.	Hour of departure.	Cause of detention.
Wednesday..	1	.....	.....	8 p. m.	
Tuesday.....	28	4 p. m.			

Certified to be correct by—

JOHN BOWEN, *Postmaster*.

DECEMBER, 1854.

Day of the week.	Monthly date.	Hour of arrival.	Cause of delay if known.	Hour of departure.	Cause of detention.
Friday.....	1	.....	.....	8 p. m.	
Thursday....	28	8 a. m.	This mail was again brought down by the team of Henry Skillman; the postmaster at Santa Fé still refusing to deliver the mail to the carriers under David Wasson's agents, the present contractor.		

Certified to be correct by—

JOHN BOWEN, *Postmaster.*

POST OFFICE SANTA FÉ,
Santa Fé County, New Mexico, July 3, 1856.

SIR: I have the honor to report that Mr. David Wasson, the contractor on route No. 12900, having failed to appear either in person or by agent to take the mail for San Antonio, Texas, I made a contract with Messrs. Houghton & Brevoort for temporary service at the same rate of compensation that was paid to Henry Skillman on his contract that expired on the 30th of June last. I trust that this arrangement will be satisfactory to the department as it was the only arrangement I could make.

Herewith I enclose you the duplicate contracts.

Very respectfully, your obedient servant,

W. A. MILLER, *Postmaster.*

DISTRICT OF COLUMBIA,
City and County of Washington, } *ss:*

Preston Beck, jr., being duly sworn, on oath declares and says: That he has resided in Santa Fé, New Mexico, for the last ten years, and personally knows Messrs. Houghton & Brevoort, and that they were employed by the postmaster of Santa Fé to carry the mails on route No. ———, from Santa Fé to San Antonio, and in consequence of failure of the regular contractor to appear and apply for the same. I also know that they regularly asked the postmaster on the first of each month whether he required them to continue the service under their contract for temporary service, or whether the contractor had

appeared either in person or by his agent and applied for the mail, up to the 1st of October, 1854, from the postmaster himself who told me they had done so; and on the 1st of the months of October, March, and December, I went with them myself to the postmaster and made the above inquiries, and he answered no, and that if Houghton & Brevoort did not continue to receive the mails per his contract with them he would regard it as a breach of their contract, and that in that case the mail would have to remain in the office until the regular contractor applied for it, or he received further instructions from the Post Office Department.

PRESTON BECK, JR.

Sworn and subscribed before me February 4, 1856.
[L. S.] N. CALLAN, *J. P.*

EL PASO, TEXAS, *December* 10, 1854.

This is to certify that Mr. David Wasson, the new mail contractor on the route from Santa Fé to San Antonio, has not up to this time produced any papers or documents to convince me that he was entitled to carry the mail; and believing as I did that the postmaster at San Antonio had exceeded his powers in delivering the mail to his agents in the month of August, I refused to allow them to proceed with the mail from this place to Santa Fé, and continued to do so, knowing Santa Fé to be the head of the route where the change should have been first made.

I had also been informed that the postmaster of Santa Fé, acting under instructions from the General Post Office Department, had made a contract with Messrs Houghton & Brevoort, who have since continued to regularly apply for it through Captain Henry Skillman, the late contractor and present carrier; and up to the present time Mr. Wasson's agents have produced no evidence to show me that it was my duty to make a change in his favor, or even that they had been regularly sworn in as mail carriers according to law.

J. HUBBEL,
Postmaster at El Paso.

I, William A. Miller, postmaster of the city of Santa Fé, Territory of New Mexico, do hereby certify that on the first day of July, 1854, there was a failure by any mail contractor to receive the mail on the route between Santa Fé, New Mexico, and San Antonio, Texas. That in accordance to instructions to me directed from the Post Office Department of the United States, I entered into contract for temporary mail service on the second day of July following, with Elias Brevoort and Joab Houghton to carry the mail on the route aforesaid. That duplicates of said contract were duly forwarded to the department at Washington by mail on the first day of August; and, by the same,

the department was duly advised of the failure to receive the mail by any authorized contractor. I further certify that until the present month the mail aforesaid has been received and delivered by said Brevoort & Houghton, and no other authorized contractors have presented themselves to receive or deliver it; and said Brevoort & Houghton have fully complied in all particulars with their contract and are entitled for such service to payment from the second day of July, 1854, to this date.

Given under my hand and seal this 30th day of November, 1854.

[L. S.] W. A. MILLER, *Postmaster.*

Attest: H. L. DICKINSON.

POST OFFICE SANTA FÉ,
Santa Fé County, New Mexico, November 30, 1854.

SIR: I write you for some instructions in regard to the mail on route No. 12900. As Mr. Wasson failed to commence service on the 1st of July, on the 2d of July I made a contract with Messrs. Brevoort & Houghton, who have regularly received and delivered the mail at this office, until this month, when, on the morning of the 29th instant, I found the mail in the store of Mr. Sabine; by whom it was left there I do not know. Mr. Wasson has never appeared here, nor any person that I knew to be his authorized agent, this month. I believe the mail was brought by a Mr. Giddings, who, I believe, says that he has bought Mr. Wasson's contract. The two persons who came here in September and October representing themselves to be the agents of Wasson, neither of them were sworn as United States mail carriers, and neither of them had the necessary evidence to show they were the agents of Wasson. I would wish, sir, to be informed what I shall do in this matter; whether I shall continue to send the mail by the temporary contractors, or give it to the persons representing themselves to be the agents of Wasson. In my opinion Messrs. Brevoort & Houghton are entitled to extra pay for carrying the mail at least up to the first of November, if not to this time. By the last October mail I wrote you a full account of this matter, also enclosing you a letter from the temporary contractors stating that they were ready to relinquish the contract to Mr. Skillman, as they had made the contract for his benefit.

Respectfully, yours,

W. A. MILLER, *Postmaster.*

SECOND ASSISTANT POSTMASTER GENERAL,
Washington, D. C.

POST OFFICE, SANTA FÉ,
Santa Fé, New Mexico, December 30, 1854.

SIR: I have just been notified by Messrs. Houghton & Brevoort that they cannot continue the temporary service longer on route No. 12900 under existing circumstances, and particularly as the time has expired which they compromised themselves to perform it. They fear delay will attend the payment by the department for said service, as the postmaster at San Antonio has refused, for some reason unknown to them or me, to deliver the mail to them or their agent, and, without any intimation from the department approving my course in making the contract with them for temporary service, they do not feel able to continue the heavy expense attending the transportation of the mail on said route at so much risk both to life and property, without a certainty of being recompensed for the service. This brings matters to a close, so far as mail service is concerned on the above route. Since matters have resulted altogether different from what was anticipated by me when I engaged the temporary service, I deem it proper to state my reason for acting as I have, and all the facts in the premises.

On the first of July last, the time specified for the commencement of service upon the above-named route, neither David Wasson or any person as his agent, applied at this office for the mail. On the second of July last I made and executed duplicate contracts with Messrs. Houghton & Brevoort for temporary service, and they have regularly received and delivered the mail at this office up to this time, with exception of the month of November, when the mail was delivered here by one Frank M. Giddings, on the 29th day thereof. On the 30th of September, 1854, a person by the name of Johnson Thomas, representing himself to be the agent of Wasson, and demanding the mail in name of Wasson; but, as he had not the proper proof to show that he was entitled as agent for said Wasson, or any proof that Wasson had complied with the law in giving bond, &c., and as he had not been known as a mail carrier, I declined to deliver the mail to him. On the 1st day of November, 1854, a Mr. Broad demanded the mail as agent for D. Wasson, but as he had no proof of any kind whatever to show for whom, or by whose authority he was acting, and not being a sworn mail carrier, I declined to deliver the mail to him. On the 1st day of December, 1854, a Mr. Frank M. Giddings demanded the mail in the name of D. Wasson, and exhibited a document purporting to be a copy of the contract with D. Wasson, but as said document did not have the name of any of the contracting parties signed thereto, nor did it have any certificate or seal of the Post Office Department to show that it had emanated from the department, I did not deem it to be of any value, and as the said Mr. Giddings did not exhibit any copy of an oath of office as mail carrier, I refused to deliver the mail to him. I would also state that when I mentioned to Mr. Giddings the fact that I did not consider the document of any value for the reason that it did not have any signatures or certificate, he stated that "Mr. Wasson had half a dozen or more of the same kind and that perhaps some of them were signed."

In view of the above facts I had continued to deliver the mail for route No. 12900 to the contractors for temporary service or their agent, a sworn mail carrier, and deem that I have been acting strictly in accordance with the law and instructions.

Respectfully, your obedient servant,

W. A. MILLER, *Postmaster.*

W. H. DUNDAS,
Second Assistant Postmaster General.

POST OFFICE, SAN ANTONIO,
December 29, 1854.

This is to certify to the Post Office Department that Henry Skillman, or his agents, have regularly applied at this post office for the "*El Paso*" and "*Santa Fé*" mails, and which have always been refused, as David Wasson, the contractor, alone is recognized at this office, on route No. 12900, from Santa Fé to San Antonio, since he made his commencement on the first of August last. Subsequent to my last certificate to this effect, I am informed that Mr. Henry Skillman is acting as mail carrier for Messrs. Houghton & Brevoort, who have been employed as substitute service by the postmaster at Santa Fé. These contractors have had the mails regularly delivered at this office by Mr. Henry Skillman, or his agents—said postmaster at Santa Fé having in the same manner refused to deliver the mails to the carriers of contractor David Wasson.

JOHN BOWEN, *Postmaster.*

WASHINGTON CITY, *March* 3, 1860.

SIR: In your letter, under date of September 22, 1857, to D. Ratcliffe, esq., of the Court of Claims, in relation to the case of Brevoort & Houghton, you say: "The reasons assigned by the postmaster of Santa Fé for refusing the agents of Wasson the mails on and after the 1st of October, 1854, viz: that their title to receive them was not sufficiently authenticated, was unsatisfactory to the department then, and is so now." Please do me the favor of forwarding me a copy of the communication to the postmaster at Santa Fé, in which the dissatisfaction of the department was expressed to the said postmaster at Santa Fé, and also a copy of the letter of William A. Miller, postmaster at Santa Fé, sent by the October mail, 1854, to you, in which his reasons are given for letting Brevoort & Houghton have the October mail, and which letter is alluded to in the letter of Mr. Miller, dated November 30, 1854.

Yours respectfully,

JOHN S. WATTS,
Attorney for Brevoort & Houghton.

Hon. W. H. DUNDAS,
Second Assistant Postmaster General.

POST OFFICE DEPARTMENT,
Contract Office, March 16, 1860.

SIR: I send herewith a copy of the only letter on our letter-books censuring the postmaster of Santa Fé for employing Brevoort & Houghton on route 12900 (old.)

No letter from him of an earlier date than 30th of November, 1854, explanatory of his reasons for continuing their service after 1st of October of that year, appears on our files.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

J. S. WATTS, Esq., (*of New Mexico,*)
Washington City.

"POST OFFICE DEPARTMENT,
"*Contract Office, January* 15, 1855.

"SIR: The department learns with surprise that although the carriers of D. Wasson, the contractor for route 12900, Santa Fé to San Antonio, applied to you as far back as October last for the mails, and regularly continued to do so thereafter, you refused, as late as the 1st of December, to let them have the same. The instructions to you, contained in the letter informing you of his acceptance, only authorized you to engage temporary service during the failure of himself or carriers to appear, should they so fail. Mr. Skillman will not be paid for a service to a later date than the 1st of September, 1854. An explanation of your conduct is required.

"W. H. DUNDAS,
"*Second Assistant Postmaster General.*

"POSTMASTER, *Santa Fé, New Mexico.*"

Deposition of Joseph Nangle, of El Paso, Texas, being and residing in said town of El Paso, a witness about years of age, taken before H. L. Dexter, deputy clerk of the district court of El Paso county, Texas, duly appointed and qualified to act according to law by his principal, John S. Gillett, clerk of said court, resident at the county seat of said county, this 25th day of February, one thousand eight hundred and sixty, on the annexed interrogatories, by virtue of a commission dated the sixteenth day of January, one thousand eight hundred and sixty, issued by Samuel H. Huntington, chief clerk of the Court of Claims, against the United States, at Washington city, District of Columbia, to be read in evidence on the part of the defendant on the trial of a suit now pending in the Court of Claims at Washington city, District of Columbia, wherein Elias Brevoort *et al.* are the plaintiffs and the United States is the defendant.

The said Joseph Nangle, being produced and duly sworn, upon the

interrogatories on the part of the defendant, deposeth and swears as follows:

To the first interrogatory he answereth:

Joseph Nangle; clerk; aged 39; at El Paso, Texas; have no interest, and no relationship existing.

To the second interrogatory he answereth:

I know G. H. Giddings, and do not know Wasson; G. H. Giddings was the contractor, during the whole time stated, on the mail route 12900, from San Antonio, Texas, to Santa Fé, New Mexico.

To the third interrogatory he answereth:

I acted as agent under a power of attorney from F. M. Giddings, who was the agent *de facto* of G. H. Giddings, from August, 1856, until the time of his death, in March, 1858, from which time I acted, under a power of attorney under G. H. Giddings, up to the time of the close of the contract, as his agent, at El Paso, Texas.

To the fourth interrogatory he answereth:

During the time I was engaged as said agent the mails were delivered to me or the men in my employ without any denial or contradiction of my right to receive the same as agent of G. H. Giddings, at El Paso, and G. H. Giddings alone. I did not know Wasson as connected in said contract.

To the fifth interrogatory he answereth:

I was simply an agent of F. M. Giddings, as before stated, and subsequently of his brother, G. H. Giddings, who was the contractor, said F. M. Giddings being the agent *de facto* of his brother, G. H. Giddings, until the time of his death, in March, 1858, as before stated.

To the sixth interrogatory he answereth:

As the El Paso office was not at the head of the route, the time for receiving and delivering the mails was not fixed for any certain day by the schedule; it was generally about the 7th from Santa Fé, and about the 17th from San Antonio, of each month. I never had occasion to demand the mail; it never was refused to the carrier.

To the seventh interrogatory he answereth:

I know nothing of my own knowledge that might throw any light upon the case in question, except that the postmaster of Santa Fé had given out a contract for the carrying of the same mail.

Cross-interrogatories by John S. Watts, attorney for Brevoort & Houghton, claimants.

To the first cross-interrogatory he answereth:

All I know is, that the second trip made was under the auspices of G. H. Giddings. If Wasson ever had any interest in the route after Giddings became connected with it, I am not aware of it.

To the second cross-interrogatory he answereth:

I was employed by F. M. Giddings, and acted under a power of attorney from him, the said F. M. Giddings, until the time of his death, and afterwards by a power of attorney of his brother, George H. Giddings, until the close of the contract.

JOSEPH NANGLE.

STATE OF TEXAS, *County of El Paso, ss:*

On this 25th day of February, A. D. 1860, personally came Joseph Nangle, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were proposed by me to the witness, and the answers thereto were written down by me in the presence of the witness, who then subscribed the deposition in my presence. The deposition of Joseph Nangle, taken at the request of the solicitor of the United States Court of Claims, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Elias Brevoort & Houghton. The adverse party was notified, did not attend, and did not object.

Given under my hand and official seal, at office, this 25th day of February, A. D. 1860.

[L. S.]

JOHN S. GILLETT,
C. D. C. U. R C.
By H. L. DEXTER,
Deputy C. D. C. U. R. C.

POST OFFICE DEPARTMENT,

I certify that the annexed is a true copy of a contract with David Wasson for carrying the mail of the United States on route No. 12900, from Santa Fé, New Mexico, to San Antonio, now on file in this department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, at the General
[L. S.] Post Office, in the city of Washington, this thirteenth day of February, A. D. 1858.

AARON V. BROWN,
Postmaster General.

(Copy.)

No. 12900.—$16,750 *per annum.*

This article of contract, made the twenty-second day of April, in the year one thousand eight hundred and fifty-four, between the United States (acting in this behalf by their Postmaster General) and David Wasson, and Daniel Fichthone, Daniel Zeigler, George Carney, and C. Hoover.

Witnesseth, that whereas David Wasson has been accepted according to law, as contractor for transporting the mail on route No. 12900 from Santa Fé, (New Mexico,) by Albuqueque, Socorro, Doña Ana,

Fort Fillmore, Frontero, (Texas,) El Paso, San Elisario, Magoffinsville, and Leona, to San Antonio and back, once a month, in two-horse coaches, at sixteen thousand seven hundred and fifty dollars per year, for and during the term commencing the first day of July, in the year one thousand eight hundred and fifty-four, and ending with the thirtieth day of June, in the year one thousand eight hundred and fifty-eight: Now, therefore, the said David Wasson, contractor, and Daniel Fichthone, Daniel Zeigler, George Carney, and C. Hoover, his sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves—

1st. To carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule; and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule. 2d. To carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion if its weight and bulk require it. 3d. To take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may hereafter be established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States, and do bind themselves, jointly and severally as aforesaid, to be answerable for the person to whom the said contractor shall commit the care and transportation of the mail, and accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care; and that the said contractor will discharge any carrier of said mail, whenever required to do so by the Postmaster General; also, that he will not transmit by himself or his agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that he will not carry, out of the mail, letters or newspapers which should go by post; and further, the said contractor will convey, without additional charge, post office blanks, mail bags, and the special agents of the department, on the exhibition of their credentials.

They further undertake, covenant, and agree with the United States, that the said contractor will collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office, all balances remaining in his hands

For which services, when performed, the said David Wasson, contractor is to be paid by the said United States the sum of sixteen thousand seven hundred and fifty dollars a year, to wit: Quarterly in the months of May, August, November, and February, through the

postmasters on the route, or otherwise, at the option of the Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract on timely notice, if he prefer it to the change; also that the Postmaster General may discontinue or curtail the service, in order to place on the route a greater degree of service, or whenever the public interests require such discontinuance or curtailment for any other cause, he allowing one month's extra pay on the amount of service dispensed with.

It is hereby also stipulated and agreed by the said contractor and his sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run, and of not more than three times the pay of the trip when the trip is not run, and no sufficient excuse for the failure is furnished; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connexion with a depending mail; and a forfeiture of a due proportion of it, when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure, and the importance of the mail; also, that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from or deliver at a post office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet, or otherwise; for refusing, after demand, to convey a mail by any coach which the contractor regularly runs, or is concerned in running on the route, beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit letters or commercial intelligence in advance of the mail, or for transporting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip. And whenever it is satisfactorily shown that the contractor, his carrier, or agent, has left or put aside the mail, or any portion of it, for the accommodation of passengers, he shall forfeit not exceeding a quarter's pay.

And it is hereby further stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may annul the contract for repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up

or running an express as aforesaid; or for transporting persons conveying mail matter out of the mail as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties, have hereunto set their hands and seals, the day and year set opposite their names respectively.

JAMES CAMPBELL, [L. S.]
Postmaster General.

Signed, sealed, and delivered, by the Postmaster General, in the presence of—

GEO. PETRIE.

JUNE 21, 1854.

DAVID WASSON,	[L. S.]	June 15, 1854.
DANIEL FICHTHONE,	[L. S.]	June 15, 1854.
DANIEL ZEIGLER,	[L. S.]	June 15, 1854.
GEORGE CARNEY,	[L. S.]	June 15, 1854.
C. HOOVER,	[L. S.]	June 15, 1854.

And by the other parties hereto in the presence of—

J. A. MATHEWS.

CHAS. RITZ.

I hereby certify, that I am well acquainted with Daniel Fichthone, Daniel Zeigler, George Carney, and C. Hoover, and the condition of their property, and that after full investigation and inquiry I am well satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

CHAS. RITZ,
Postmaster at Lewistown, Pennsylvania.

A true copy.

1855, April 7. Transferred to George H. Giddings, from 13th March, 1855.

The schedule of departures and arrivals.

Leave Santa Fé on the first day of each month.
Arrive at San Antonio in twenty-five days.
Leave San Antonio on the first day of each month.
Arrive at Santa Fé in twenty-five days.

A true copy.

POST OFFICE DEPARTMENT.

I certify that the annexed is a true copy of a contract with George H. Giddings for carrying the mail of the United States on route No. 12900, from Santa Fé, New Mexico, to San Antonio, now on file in this department.

In testimony whereof I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the Gene-
[L. S.] ral Post Office in the city of Washington, this 19th day of September, A. D. 1857.

AARON V. BROWN,
Postmaster General.

No. 12900. $16,750 per annum.

This article of contract, made the seventh day of April, in the year one thousand eight hundred and fifty-five, between the United States (acting in this behalf by their Postmaster General) and George H. Giddings and Abraham Morrell and William H. Jelliff, witnesseth: That whereas George H. Giddings has been accepted according to law as contractor for transporting the mail on route No. 12900, from Santa Fé (New Mexico) by Albuquerque, Socorra, Los Cruzas, Doña Ana, Fort Fillmore, Frontero, (Texas,) El Paso, San Elisario, Magoffinsville, and Leona, to San Antonio and back, once a month, in two-horse coaches, at sixteen thousand seven hundred and fifty dollars per year, for and during the term commencing the 13th day of March, in the year one thousand eight hundred and fifty-five, and ending with the 30th day of June, in the year one thousand eight hundred and fifty-eight: Now, therefore, the said George H. Giddings, contractor, and Abraham Morrell and William H. Jelliff, his sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves, 1st, to carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule, and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule; 2d, to carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion, if its weight and bulk require it; 3d, to take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may hereafter be established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States,

and do bind themselves jointly and severally as aforesaid, to be answerable for the person to whom the said contractor shall commit the care and transportation of the mail, and accountable to the United States for any damage which may be sustained by the United States through his unfaithfulness or want of care, and that the said contractor will discharge any carrier of said mail whenever required to do so by the Postmaster General; also that he will not transmit by himself or his agent, or be concerned in transmitting commercial intelligence more rapidly than by mail, and that he will not carry out of the mail letters or newspapers which should go by post; and further, the said contractor will convey, without additional charge, post office blanks, mail bags, and the special agents of the department, on the exhibition of their credentials.

They further undertake, covenant, and agree with the United States, that the said contractor will collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands. For which services, when performed, the said George H. Giddings, contractor, is to be paid by the said United States the sum of sixteen thousand seven hundred and fifty dollars a year, to wit: quarterly in the months of May, August, November, and February, through the postmasters on the route, or otherwise, at the option of the Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties, that the Postmaster General may alter the contract and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract on timely notice, if he prefer it to the change; also that the Postmaster General may discontinue or curtail the service, in order to place on the route a greater degree of service, or whenever the public interests require such discontinuance or curtailment for any other cause, he allowing one month's extra pay on the amount of service dispensed with.

It is hereby also stipulated and agreed by the said contractor and his sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run, and of not more than three times the pay of the trip when the trip is not run, and no sufficient excuse for the failure is furnished; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connexion with a depending mail, and a forfeiture of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also that fines may be imposed upon

the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time for failing to take from or deliver at a post office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet, or otherwise; for refusing, after demand, to convey a mail by any coach which the contractor regularly runs, or is concerned in running on the route, beyond the number of trips above specified, or for not arriving at the time set in the schedule; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mail, or for transporting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip; and whenever it is satisfactorily shown that the contractor, his carrier or agent, has left or put aside the mail, or any portion of it, for the accommodation of passengers, he shall forfeit not exceeding a quarter's pay.

And it is hereby further stipulated and agreed by the said contractor and his sureties, that the Postmaster General may annul the contract for repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or for transporting persons conveying mail matter out of the mail as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names respectively.

JAMES CAMPBELL, [L. S.]
Postmaster General.
GEORGE H. GIDDINGS. [L. S.]
(May 1, 1855.)
ABRAHAM MORRELL. [L. S.]
(May 1, 1855.)
WILLIAM H. JELLIFF. [L. S.]
(May 1, 1855.)

Signed, sealed, and delivered by the Postmaster General in the presence of—

GEO. PETRIE, May 19, 1855.

And by the other parties hereto in the presence of—

ANTHONY SUAREZ.
MILES S. CHAMBERS.

I hereby certify that I am well acquainted with Abraham Morrell and William H. Jelliff, and the condition of their property, and that, after full investigation and inquiry, I am well satisfied that they are good and sufficent sureties for the amount in the foregoing contract.

SAMUEL M. CHAMBERS,
Postmaster at Jersey City, N. J.

The schedule of departures and arrivals.

Leave Santa Fé on the first day of each month, arrive at San Antonio in twenty-five days.

Leave San Antonio on the first day of each month, arrive at Santa Fé in twenty-five days.

DR. *George H. Giddings, contractor, in account with the United States.* CR.

1855.				1856.		
Jan. 13	To deductions	$1,500 00		Jan. 15	By fines remitted	$1,772 75
	To amount paid Brevoort & Houghton for recognized service from July 1 to August 31, 1854	4,195 11		Feb. 26	By amount withheld and conditionally paid to Brevoort & Houghton now returned	2,029 89
Feb. 2	To warrant No. 6118	1,000 00			By amount paid to Brevoort & Houghton, January 26, 1855, now returned	4,195 11
	---do---	500 00		Nov. 8	By fines remitted	200 00
	---do---	1,179 89		1857.		
May 19	To fines	678 00		Feb. 20	---do---	750 00
	To amount retained and conditionally paid to Brevoort & Houghton	2,029 86		Sept. 30	By transportation on route 12900, from Santa Fé to San Antonio, from August 18, 1854, to September 30, 1857, at $8,375 per quarter	104,505 42
	To warrant No. 8411	1,000 00				
	---do---8412	2,500 00				
	---do---8413	6,172 57				
Sept. 27	To fines	2,044 75				
	To warrant No. 682	6,330 25				
Nov. 20	---do---1333	6,372 28				
1856.						
Jan. 16	---do---2618	1,000 00				
	---do---2609	672 75				
Feb. 6	---do---2809	4,187 50				
29	To increased pay to Brevoort & Houghton for recognized service from July 1 to August 31, 1854	1,467 43				
	To deductions	1,274 45				
	---do---	1,365 49				
Mar. 3	To warrant No. 3651	2,117 63				
8	---do---3997	100 00				
31	To collections	88 80				
May 16	To draft No. 4426	1,438 00				
	To warrant No. 4833	1,562 00				
June 26	---do---6059	1,098 70				
30	To collections	43 00				
July 26	To warrant No. 6305	187 50				
	---do---6304	4,000 00				

Aug.	25	------do------	7118	7,130 91			
Nov.	11	------do------	8160	200 00			
	15	------do------	8400	6,000 00			
	27	------do------	8858	250 00			
1857.							
Feb.	13	------do------	429	6,000 00			
	20	------do------	707	750 00			
Mar.	6	To draft------	5668	2,375 00			
	9	To warrant ----	1430	9,516 30			
April	20	------do------	1955	6,000 00			
		------do------	1956	2,375 00			
Aug.	10	------do------	4489	7,500 00			
June	30	To collections		308 19			
Nov.	10	To warrant No. 6317		8,941 81			
				113,453 17			113,453 17

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST OFFICE DEPARTMENT.

I, Thomas M. Tate, Auditor of the Treasury for the Post Office Department, do hereby certify the above and attached to be a true and correct statement of the account of George H. Giddings, mail contractor on route 12900, as audited and adjusted at this office.

[L. S.] In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office, at the city of Washington, this twelfth day of February, A. D. 1858.

THOS. M. TATE,
Auditor of the Treasury for the Post Office Department.

POST OFFICE DEPARTMENT.

I certify that the annexed are true copies of orders made by the Postmaster General, as taken from the records of this department, modifying and affecting the contract for route No. 12900, Santa Fé to San Antonio.

In testimony whereof I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the General Post Office, in the city of Washington, this thirteenth day of February, A. D. 1858.

[L. S.]

AARON V. BROWN,
Postmaster General.

Route 12900—*Santa Fé to San Antonio.*

January 19, 1855.—Ordered by the Postmaster General to "recognize the service of Elias Brevort and Jacob Houghton, between the 1st of July and 31st of August, 1854, at $24,900 per annum, (viz: the rate of Henry Skillman's bid of 9th August, 1854,) and refer to the Auditor to pay and charge D. Wasson."

April 7, 1855 —Ordered that "transfer of the contract (from David Wasson) to George H. Giddings, of San Antonio, Texas, from 13th of March, 1855, be authorized on the usual terms."

May 19, 1855.—Ordered as follows: "The first section of the act making appropriations for the service of the Post Office Department, during the fiscal year ending 30th of June, 1856, approved March 3, 1855, having directed that compensation be made to George H. Giddings, for carrying the mails on this route, the sum of $33,500 per annum, commencing on the 18th day of August, 1854, and continuing one year, in lieu of the compensation stated in the contract. It is ordered that he be paid at that rate from the 18th of August, 1854, to the 31st of March, (inclusive) 1855, deducting the settlements which have been already made for service on the route prior to the 1st of January, 1855, and retaining also $2,029 89 to pay Brevort & Houghton for service during the month of September, 1854, in case they make good their claim there, subject to fines and deductions."

February 29, 1856.—Ordered to "modify the order of 19th January, 1855, so as to pay Brevort & Houghton for the service recognized thereby at the rate of $28,000 per annum, instead of the rate specified therein; and so as, instead of charging D. Wasson, to charge George H. Giddings with the damages, $1,467 43, viz: the difference between said rate of allowance and that of Wasson's accepted bid, for the period from 1st July to 18th August, 1854."

Also ordered to "recognize the service of Brevort & Houghton in conveying the mail from Santa Fé to San Antonio in September, 1854, at $1,141 30."

Also ordered to "modify the order of 19th May, 1855, so as to deduct from the pay of Giddings $1,274 45, for failure to carry the mails from 18th of August to 1st of September, 1854, and $1,365 49 for failure to run from Santa Fé to San Antonio in September, 1854; also so as to rescind the direction to withhold $2,029 89 for the month of September, 1854, and so much of the one requiring to deduct the settlement for service prior to 1st January, 1855, as embraces the $4,195 11 paid to Brevort & Houghton."

POST OFFICE DEPARTMENT,
Contract Office, May 10, 1857.

SIR: A press of business connected with our recent large lettings has prevented an earlier reply to your note of the 17th ultimo.

David Wasson became, in April, 1854, the accepted bidder for route 12900, Santa Fé, New Mexico to San Antonio, Texas, at $16,750 per annum; service to be monthly each way, and run from July 1, 1854, to July 1, 1858. The postmaster at Santa Fé was instructed, in case he failed to appear on the 1st of July, 1854, to engage temporary conveyance till he, or some regularly authorized contractor should apply for the mail, at the lowest practicable rates. He did not apply for the mail at San Antonio till August 1, and at Santa Fé till October 1 of that year.

On the trip going north, in August, (say about the 17th of that month,) the postmaster of El Paso refused to let his carriers have the mail after it was overhauled there. Consequently they turned about for San Antonio. Much evidence has been filed in the department to show that this refusal of the postmaster was superinduced by threats, and other improper interference on the part of the carriers of Brevoort & Houghton, which individuals had been employed by the postmaster of Santa Fé for temporary service, at $28,000 a year, from July 1, 1854, and who continued to obtain the mail from the postmaster of that place down to January 1, 1855, for the trips going south.

The postmaster of San Antonio put the mails to go north all this time in charge of Wasson's agents, or rather those of his transferee, Mr. Giddings.

The department, in its settlements, deemed it proper, and indeed was so instructed in effect, by the Post Office appropriation act of March 3, 1855, to regard Mr. Giddings as the contractor and to pay him accordingly. It further took the view that Brevoort & Houghton should have withdrawn from the road, and that the postmaster of Santa Fé should have withheld from them the mails after October 1, 1857, when the carriers of the regularly authorized contractor applied for the mails at that place.

It therefore paid Brevoort & Houghton for only two and one-half months service, say for the round trips in July and August, and the

downward one in September, 1854, at the rate agreed on by the postmaster of $28,000 per annum.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

D. RATCLIFFE, Esq.,
Assistant Attorney for Court of Claims.

POST OFFICE DEPARTMENT,
Contract Office, October 17, 1857.

SIR: I transmit herewith the copies of papers requested by you in relation to application for and delivery of mails, at Santa Fé and San Antonio, on route 12900, in the latter portion of the year 1854.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

DANIEL RATCLIFFE, Esq.,
Assistant Attorney for Court of Claims,
Washington City.

STATE OF TEXAS, *City of San Antonio:*

Before me, H. Canterbury, a notary public in and for the county of Bexar and State aforesaid, personally appeared George W. Woods, mail carrier for David Wasson, contractor for route No. 12,900, from San Antonio to Santa Fé, who being duly sworn, says: That on the first day of August, 1854, he was sworn as carrier on said route for said contractor; received the mail from the postmaster at San Antonio on the first day of August, 1854; proceeded to El Paso, where he arrived on the 17th of August; delivered the mail to the postmaster and demanded the mail for Santa Fé on the same day, which was refused him and delivered to Captain Skillman; that he showed the postmaster the affidavit of Johnson Thomas as agent of the contractor; and that having no other evidence of his right to demand the mail from the postmaster at Santa Fé, except the mail from San Antonio, which was also withheld from him although frequently demanded, he deemed it unnecessary to proceed to Santa Fé, and returned to this place to report to the contractor; that the postmaster furthermore said that he would not deliver the mail to him on his return from Santa Fé, if he should proceed to Santa Fé and return.

G. W. WOODS.

STATE OF TEXAS, *County of Bexar:*

Before me, H. Canterbury, a notary public in and for said county duly commissioned and qualified, this day personally appeared Geo. W. Woods, who in my presence subscribed, and being by me sworn said, that the statement on the reverse was true and correct.

In testimony whereof I have hereunto signed my name and affixed the impress of my official seal, at San Antonio, this 16th day of September, 1854.

[L. S.] H. CANTERBURY,
Notary Public, Bexar County, Texas.

POST OFFICE, *San Antonio, September* 19, 1854.

SIR: On the 16th instant, the mail carrier in the employ of David Wasson, mail contractor on route 12900, Santa Fé to San Antonio, returned to this place, stating that the postmaster at El Paso had refused to give him the mail for Santa Fé, having no instructions to do so from the department, and he could not recognize any other contractor than Henry Skillman, the late contractor. I shall continue to give the mail at this end of the route to the agent of David Wasson, who commenced service August 1, without further reference to this high handed measure, until the department shall take such steps as may be deemed necessary.

On the 27th August, I replied to your letter of the 11th, stating that the agent of David Wasson, a Mr. Thomas, commenced service on route 12900, Santa Fé to this office, commenced service August 1, from this end of the route.

Very respectfully, your obedient servant,
JOHN BOWEN, *Postmaster.*

W. H. DUNDAS, Esq.,
2d Assistant Postmaster General, Washington, D. C.

POST OFFICE, *San Antonio, August* 27, 1854.

SIR: I acknowledged receipt of your communication 11th instant, and in reply refer you to mine of the 4th, which I confirm by stating that David Wasson, through his agent, commenced service at this end of the line from Santa Fé, route 12900, to San Antonio, August 1, 1854, the service up to that date having been performed by the late contractor, Henry Skillman, who reported himself as being verbally authorized by the department to continue the service until the new contractor should commence. By his report, he is employed by the department, but I am not advised on what terms.

Very respectfully, your obedient servant,
JOHN BOWEN, *Postmaster.*

W. H. DUNDAS, Esq.,
2d Assistant Postmaster General, Washington, D. C.

POST OFFICE, SANTA FÉ,
Santa Fé County, New Mexico, July 3, 1854.

SIR: I have the honor to report that Mr. David Wasson, the contractor on route No. 12900, having failed to appear either in person or by agent, to take the mail for San Antonio, Texas, I made a contract with Messrs. Houghton & Brevoort for temporary service at the same rate of compensation that was paid to Henry Skillman on his contract that expired on the 30th of June last. I trust that this arrangement will be satisfactory to the department, as it was the only arrangement I could make.

Herewith I enclose you the duplicate contracts.

Very respectfully, your obedient servant,

W. A. MILLER, *Postmaster.*

2D ASSISTANT POSTMASTER GENERAL,
Washington, D. C.

POST OFFICE, *San Antonio, October* 30, 1854.

This is to certify that application has been regularly made for the mail, by the agents and carriers of the late contractor Henry Skillman; and that it has only been refused since the commencement made August 1, by the new contractor, David Wasson.

JOHN BOWEN, *Postmaster.*

STATE OF TEXAS, *County of Bexar:*

Before me, notary public in and for said county, personally appeared Philip Brod, who being duly sworn, says: That he is the duly authorized and sworn carrier of the mail from San Antonio through El Paso to Santa Fé, for George H. Giddings, as attorney in fact of David Wasson, and that, on the 1st day of November, 1854, he applied with a four-horse ambulance to W. A. Miller, the postmaster at Santa Fé, for the United States mail, and exhibited to him his authority to receive the same, but he refused to deliver the same; and further, that on the 10th day of November, 1854, affiant, with the same ambulance and same authority, applied to J. Hubbell, the postmaster at El Paso, for the United States mail, which he also refused to deliver affiant, stating that he recognized no one but Henry Skillman as being authorized to receive the mail.

PHILIP RROD.

Sworn to and subscribed before me this December —, 1854.

In testimony whereof I have hereunto subscribed my name, and affixed the impress of my official seal at the city of San Antonio, the day and year above written.

H. CANTERBURY,
Notary Public, Bexar County, Texas.

POST OFFICE, SANTA FÉ,
Santa Fé Co., New Mexico, November 30, 1854.

SIR: I write you for some instructions in regard to the mail on route No. 12900, as Mr. Wasson failed to commence service on the 1st of July. On the 2d of July I made a contract with Messrs. Brevoort & Houghton, who have regularly received and delivered the mail at this office until this month, when, on the morning of the 29th instant, I found the mail in the store of Mr. Sabine; by whom it was left there I do not know.

Mr. Wasson has never appeared here, nor any person that I knew to be his authorized agent. This month, I believe, the mail was brought by a Mr. Giddings, who, I believe, says he has bought Mr. Wasson's contract.

The two persons who came here in September and October, representing themselves to be the agents of Wasson, neither of them were sworn as United States mail carriers, and neither had the necessary evidence to show that they were the agents of Wasson.

I would wish, sir, to be informed what I shall do in this matter. Whether I shall continue to send the mail by the temporary contractors, or give it to the persons representing themselves to be the agents of Wasson. In my opinion, Messrs. Brevoort & Houghton are entitled to the pay for carrying the mail, at least up to the 1st of November, if not to this time.

By the last October mail I wrote you a full account of this matter, also enclosing you a letter from the temporary contractors, stating that they were ready to relinquish the contract to Mr. Skillman, as they had made the contract for his benefit.

Respectfully, yours,

W. A. MILLER, *P. M.*

SECOND ASSISTANT POSTMASTER GENERAL,
Washington, D. C.

EL PASO, TEXAS, *December* 10, 1854.

SIR: Your favor of October 7 was received by last mail. In reply, I have to say that the carrier on the route was refused the mail at the time you mention for the following reasons:

1st. I had been notified by the postmaster at Santa Fé, *the head* of the route, that under authority of your department he had made a contract with Houghton & Brevoort, agents for Captain H. Skillman, the last contractor, for the temporary carrying of the mail, until such time as the new contractor should present himself at the head of the route, and apply at his office for the mail.

Instead of this, the new contractor sent his agents to San Antonio first; and feeling certain that the postmaster there had exceeded his powers in making the transfer at that place, and that Mr. Wasson's party could have no right to the mail until it was given them by the

postmaster at Sata Fé, I refused to allow them to take the mail from this place, and gave it to Captain Skillman.

2d. The new party produced no papers or documents of any kind to show me that they were entitled to the mail, and they have not yet done so, to my satisfaction, or to that of the postmaster at Santa Fé.

3d. The outfit of the new party was so incomplete in August that there must necessarily have been a failure of the mail for that month, and they have not yet made a trip in their schedule time.

I hope that the above reasons will be found sufficient to justify me in continuing to regard Messrs. Houghton & Brevoort as the legal contractors on this route, until notified by the postmaster at Santa Fé.

Respectfully, your obedient servant,

J. HUBBELL,
Postmaster at El Paso.

WM. H. DUNDAS, Esq.,
Second Assistant Postmaster General.

POST OFFICE, EL PASO, TEXAS,
December 10, 1854.

This is to certify that Mr. David Wasson, the new mail contractor on the route from Santa Fé to San Antonio, has not up to this time produced any papers or documents sufficient to convince me that he was entitled to carry the mail, and believing, as I did, that the postmaster at San Antonio had exceeded his powers in delivering the mail to his agents in the month of August, I refused to allow them to proceed with the mail from this place to Santa Fé, and continued to do so, knowing Santa Fé to be the head of the route, where the change should have been made first instead of San Antonio.

I had also been informed that, acting under instructions from the General Post Office Department, the postmaster at Santa Fé had made a contract with Messrs. Houghton & Brevoort, for the carrying the mail until such time as the new claimant should present himself at that office, and prove that he was entitled to receive the mail. Accordingly, I felt certain that, until further instructions from the postmaster at Santa Fé, I should be justified in giving the mail only to Houghton & Brevoort, who have since continued to regularly apply for it through Captain Henry Skillman, the late contractor and present carrier, and up to the present time Mr. Wasson's agents have produced no evidence to convince me that it was my duty to change in his favor, or even that they had been regularly sworn in as mail carriers according to law.

HUBBELL,
Postmaster at El Paso.

POST OFFICE, SAN ANTONIO, *December* 29, 1854.

This is to certify to the Post Office Department that Henry Skillman, or his agents, have regularly applied at this post office for the "*El Paso*" and "*Santa Fé*" mails, and which have always been refused, as David Wasson, the contractor, alone is recognized at this office on route No. 12900, from Santa Fé to San Antonio, since he made his commencement on the 1st of August last.

Subsequent to my last certificate to this effect, I am informed that Mr. Henry Skillman is acting as mail carrier for Messrs. Houghton & Brevoort, who have been employed as substitute service by the postmaster at Santa Fé. These contractors have had the mails regularly delivered at this office by Mr. Henry Skillman or his agents; said postmaster at Santa Fé having, in the same manner, refused to deliver the mails to the carriers of contractor David Wasson.

JOHN BOWEN, *P. M.*

POST OFFICE, SANTA FÉ,
Santa Fé County, New Mexico.

SIR: I have just been notified by Messrs. Houghton & Brevoort that they cannot continue the temporary service longer on route No. 12900 under existing circumstances, and particularly as the time has expired which they compromised themselves to perform it. They fear delay will attend the payment by the department for said services, as the postmaster at San Antonio has refused, for some reason unknown to them or me, to deliver the mail to them, or their agent, and without any intimation from the department approbatory of my course in making the contract with them for temporary service, they do not feel able to continue the heavy expense attending the transportation of the mail on said route, at so much risk, both to life and property, without a certainty of being recompensed for their services. This brings matters to a close, so far as mail service is concerned, on the above route, since matters have resulted altogether different from what was anticipated by me when I engaged the temporary service. I deem it proper to state my reason for acting as I have, and all the facts in the premises. On the first of July last, the time specified for the commencement of services upon the above named route, neither David Wasson, or any person as his agent, applied at this office for the mail. On the 2d day of July last I made and executed duplicate contracts with Messrs. Houghton & Brevoort for temporary service, and they have regularly received and delivered the mail, at this office, up to this time, with exception of the month of November, when the mail was delivered here by one Frank M. Giddings, on the 29th day thereof. On the 30th of September, 1854, a person by the name of Johnson Thomas, representing himself to be the agent of Wasson, and demanding the mail in the name of Wasson; but as he did not have the proper proof to show that he was entitled as agent for said Wasson, or any proof that Wasson had complied with the law in giving bond,

&c., and as he had not been sworn as a mail carrier, I declined to deliver the mail to him. On the first day of November, 1854, a Mr. Brod demanded the mail, as agent for D. Wasson, but as he had no proof of any kind whatever to show for whom, or by whose authority, he was acting, and not being a sworn mail carrier, I declined to deliver the mail to him.

On the first day of December, 1854, a Mr. Frank M. Giddings demanded the mail in the name of D. Wasson, and exhibited a document purporting to be a copy of the contract with D. Wasson, but as said document did not have the names of any of the contracting parties signed thereto, nor did it have any certificate or seal of the Post Office Department to show that it had emanated from the department, I did not deem it to be of any value; and as the said Mr. Giddings did not exhibit any copy of an oath of office as mail carrier, I refused to deliver the mail to him. I would also state that when I mentioned to Mr. Giddings the fact that I did not consider the document of any value, for the reason that it did not have any signature or certificate, he stated that "Mr. Wasson had half a dozen, or more, of the same kind, and that perhaps some of them were signed."

In view of the above facts I have continued to deliver the mail for route No. 12900 to the contractors for temporary service, or their agent, a sworn mail carrier, and deem that I have been acting strictly in accordance with the law and instructions.

Respectfully, your obedient servant,

W. A. MILLER,
Postmaster.

WM. H. DUNDAS, Esq.,
Second Assistant Postmaster General.

POST OFFICE DEPARTMENT, CONTRACT OFFICE,
September 22, 1857.

SIR: Please find enclosed the copies of contracts, and the statements in regard to pay, on route 12900, Santa Fé to San Antonio, called for by your letter of the 2d.

The service for which Brevoort & Houghton drew pay ($5,858 69) was the entire round trips in July and August, 1854, and the downward trip to San Antonio in September of the same year.

The following is a brief history of the case:

David Wasson was accepted, under date of April 22, 1854, for monthly service each way on the road, from July 1, 1854, to July 1, 1858, at $16,750 per annum. In the notice of the letting, issued soon after the issuing of the acceptance to the postmaster of Santa Fé, he was instructed, in case the accepted bidder failed to appear on the 1st of July to engage service, (temporary, of course,) and report to the department. This was to be engaged at the lowest rates practicable.

Mr. Wasson failed to appear, or any one for him, on that date, at either end of the road. He commenced service through his assignee and agent, George H. Giddings, by taking the mails from San Antonio on the 1st of August, 1854; but owing to the refusal of the postmaster of El Paso to let him have the bags after their overhauling at his

office, he did not proceed thence to Santa Fé on that trip. Mr. Giddings again left San Antonio with the mail on the 1st of September, and on the first day of the following months, but was refused the return mail by the postmaster of Santa Fé, who had employed Brevoort & Houghton from the 1st of July, 1854, and who, it appears, continued to carry the downward mails to San Antonio, under his permission or direction, till December 31, 1854.

The Postmaster General in office at the dates referred to declined paying Messrs. Brevoort & Houghton for a longer period than was covered by the above-mentioned allowances, because he felt obligated to settle with the regular contractors, or their assignees, for the remaining period, (during all of which the evidence showed they were running on the road,) and because he did not feel authorized to pay two different sets of carriers for any portion of the time.

The correspondence of the department, during the time Brevoort & Houghton ran on the road, in reference to the persons to receive the mail was with its agents, the postmasters at the ends of the road, and not with them.

The reason assigned by the postmaster of Santa Fé for refusing the agents of Wasson the mails on and after October 1, 1854, viz: that their title to receive them was not sufficiently authenticated, was unsatisfactory to the department then, and is so now.

George H. Giddings did not become the regular contractor for the service, under the order of the department, till March 13, 1855, from which date he became the transferee of Wasson.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

D. RATCLIFFE, Esq.,
Assistant Attorney to the Court of Claims, Washington City.

Amount paid Brevoort & Houghton for services from July 1 to August 31, 1854	$4,195 11
Amount paid Brevoort & Houghton for half trip in September, 1854	1,663 58
	5,858 69
Amount paid George H. Giddings for services from August 18 to December 31, 1854	$12,380 43

IN THE UNITED STATES COURT OF CLAIMS.—No. 530.

ELIAS BREVOORT *et al. vs.* THE UNITED STATES.

STATE OF PENNSYLVANIA, *Mifflin County, ss:*

In accordance with the authority vested in me by the fourth section of rule ninth of the Court of Claims of the United States, in the case of Elias Brevoort *et al. vs.* The United States, in said court pending, to take the deposition of George W. Woods, of Lewistown, Mifflin county, Pennsylvania, a witness, to interrogatories and cross-interrogatories propounded to said George W. Woods in said case hereunto annexed, I, Henry J. Walters, clerk of sessions and oyer and terminer for said county, commissioner to take depositions under said rule, on this 10th day of February, A. D. 1860, caused the said witness, George W. Woods, to come before me, and having sworn him to make true answers to said interrogatories and cross-interrogatories, he, the said George W. Woods, answered as follows:

1st question. State your name, occupation, age, place of residence the last year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants.

To the 1st question George W. Woods, the witness, answered as follows: George W. Woods is my name; laborer by occupation; past 41 years old; Lewistown, Pennsylvania, has been my residence for the past year; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no way related to the claimants, to my knowledge.

2d question. State whether you are acquainted with David Wasson and George H. Giddings, and whether they, or either of them, were engaged in carrying the United States mail, under a contract with the Post Office Department, between San Antonio, Texas, and Santa Fé, New Mexico, from the 1st day of August, 1859, until the 30th day of June, 1859, on route No. 12900.

To the 2d question the witness answers: I am acquainted with David Wasson and George H. Giddings. Wasson had a contract in 1854 or 1855 for carrying the United States mail with the Post Office Department, between the places indicated, San Antonio, Texas, and Santa Fé, New Mexico, and sold it out to George H. Giddings—first a share, and afterwards the whole.

3d question. State what relation you sustained to said Wasson and Giddings, or either of them, in the transportation of said mail during the time mentioned in your answer to the 2d question.

To the 3d question the witness answers: I was captain of one of the trains while Wasson and Wasson & Giddings held the contract, but had no connexion with them, or either of them, after Wasson sold out entirely to Giddings.

4th question. State whether you demanded the mails of the United States in the name of Wasson & Giddings, or either of them, at San Antonio, El Paso, and Santa Fé, from the postmasters thereof, and what answers you received.

To the 4th question the witness answers: I demanded the mail at El Paso of the postmaster, having first carried it there from San Antonio, and he refused to give it to me, alleging he had no orders from the department for any other person than for Skillman to take them. I took a witness, and demanded it in presence of witness. He still refused to give it. I returned thence to San Antonio.

5th question. State whether you were regularly sworn as mail-carrier or agent, and whether you produced to the different postmasters where the said mail was demanded evidence of that fact.

To the 5th question witness answers: I cannot recollect if I was sworn or not; I think now I was not. I took letters from Giddings to a friend of his at El Paso, as evidence of my agency or official position, to secure his aid in getting me the mail from the postmaster there.

6th question. State as near as you can the time when you demanded the mails at the different post offices mentioned.

To the 6th question witness answers: I think it was about the 20th of August, 1854 or 1855—I think now in 1854—I demanded and was refused the mail at El Paso.

7th question. State whether you, in company with G. H. Giddings, applied for the mail at Santa Fé in the early part of August, 1854, and what reply the postmaster made.

To the 7th question the witness answers: I was not at Santa Fé at all, and never demanded the mail there. Johnston Thomas had charge of the other train, and is or was in Philadelphia.

8th question. State whether a copy of a contract between Wasson and the Post Office Department for carrying the mail was shown to the postmaster at Santa Fé, and also whether you produced evidence of being sworn as a carrier or agent of said mail for Wasson & Giddings.

To the 8th question witness answers: I was not at Santa Fé, and know nothing of what was done there about it. I produced no other evidence of my authority to carry the mail but what I mentioned in my answer to the 5th interrogatory.

9th question. State whether you know anything further in relation to this claim.

To the 9th question witness answers: I know nothing further relative to the claim under consideration.

To the first cross-interrogatory witness answers: I think Wasson's interest in the said mail-route ceased about the 1st of November, 1854, when Giddings had the exclusive interest himself, to the best of my knowledge.

To the 2d cross-interrogatory witness answers: I was employed by Wasson first as captain of one of the trains, and afterwards, when Giddings obtained an interest, by him also.

G. W. WOODS.

STATE OF PENNSYLVANIA, *Mifflin County, ss:*

On this 10th day of February, A. D. 1860, personally came George W. Woods, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth,

the questions contained in the within, above, and foregoing deposition were written down by the clerk of sessions and oyer and terminer of said county as commissioner, and then proposed by me, as well as the cross-interrogatories; and the answers thereto were written down by me in presence of the witness, who then subscribed the deposition in my presence. The deposition of George W. Woods, taken at the request of Daniel Ratcliffe, assistant solicitor of the United States Court of Claims, on the part of the United States, and the cross-interrogatories at the request of John S. Watts, attorney for claimants, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Elias Brevoort *et al.*

The adverse party was notified, and did not attend, and did not object.

In testimony whereof, I have hereunto set my hand and seal of office, at Lewistown, in said county, this 10th day of February, A. D. 1860.

[L. S.]

H. J. WALTERS,

Clerk of Sessions and Oyer and Terminer of Mifflin County, Pennsylvania, Commissioner, &c.

Commissioner's fees, $5.

No. 530.

ELIAS BREVOORT *et al. vs.* THE UNITED STATES.

The following interrogatories are proposed by the solicitor of the United States Court of Claims, to be propounded to George W. Woods, of Lewistown, Mifflin county, Pa., by ——— ———, esq., clerk of sessions and oyer and terminer for the county aforesaid, the said ——— ———, being a clerk of a court of record, and hence a commissioner, under the 9th rule of the Court of Claims of the United States, authorized to take testimony in cases pending in said Court, the answers to which said interrogatories will constitute the deposition of said Woods, intended to be used in evidence in the case of Elias Brevoort *et al.* against the United States, as aforesaid, now pending in said Court, to wit:

SIR: As assistant solicitor of the United States for the Court of Claims, I propose to take the deposition of George W. Woods, of Lewistown, Mifflin county, Pa., to consist of his answers to the foregoing questions or interrogatories, nine in number, before ——— ———, esq., clerk of sessions and oyer and terminer for Mifflin county, Pa., and which is a court of record, and who is, in consequence thereof, a commissioner, constituted by the 5th section of the 9th rule of the Court of Claims of the United States to take testimony, to be used in the investigation of claims before said Court, at his office in Mifflin county aforesaid, between the hours of ten o'clock in the forenoon and five o'clock p. m. of the third day of January, 1860, to be used as testimony in the case of Elias Brevoort *et al.* against the United

States, now pending in said Court of Claims, and numbered 530 on the general docket thereof. Of all of which please take notice and oblige.

DANIEL RATCLIFFE,
Assistant Solicitor of the Court of Claims.

JOHN S. WATTS, Esq.,
Attorney for the Petitioners, Brevoort et al.

The notice is acknowledged, and I agree that this commission may be executed by a clerk of a court of record, or a justice of the peace, on the day specified in the notice, or any other day which may be convenient.

JOHN S. WATTS,
Attorney for Brevoort & Houghton.

WASHINGTON, D. C., *December* 5, 1859.

The questions.

1st question. State your name, occupation, age, place of residence the last year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimants.

2d question. State whether you are acquainted with David Wasson and George H. Giddings, and whether they, or either of them, were engaged in carrying the United States mail, under a contract with the Post Office Department, between San Antonio, Texas, and Santa Fé, New Mexico, from the first day of August, 1859, until the 30th of June, 1859, on route No. 12900.

3d question. State what relation you sustained to said Wasson and Giddings, or either of them, in the transportation of said mail during the time mentioned in your answer to the second question?

4th question. State whether you demanded the mails of the United States in the name of Wasson & Giddings, or either of them, at San Antonio, El Paso, and Santa Fé, from the postmasters thereof, and what answers you received.

5th question. State whether you were regularly sworn as mail-carrier or agent, and whether you produced to the different postmasters where the said mail was demanded evidence of that fact.

6th question. State as near as you can the time when you demanded the mails at the different post offices mentioned.

7th question. State whether you, in company with G. H. Giddings, applied for the mail at Santa Fé in the early part of August, 1854, and what reply the postmaster made.

8th question. State whether a copy of a contract between Wasson and the Post Office Department for carrying the mail was shown to the postmaster at Santa Fé, and also whether you produced evidence of being sworn as a carrier or agent of said mail for Wasson or Giddings.

9th question. State whether you know anything further in relation to this claim.

Cross-interrogatories by John S. Watts, attorney for claimants, to be propounded to the witnesses.

Question 1st by claimants. Please state if you know at what time the interest of Wasson ceased, and that of Giddings commenced on said mail-route.

Question 2d by claimants. By whom were you employed, and in what capacity did you act during your connexion with said mail-route?

COURT OF CLAIMS.—No. 530.

BREVOORT & HOUGHTON *vs.* THE UNITED STATES.

Argument of petitioners.

Brevoort & Houghton contracted with the postmaster at Santa Fé, New Mexico, on the 2d day of July, 1854, to carry the mail on route No. 12900, from Santa Fé, New Mexico, to San Antonio, Texas, a distance of about one thousand miles, for the compensation at which Captain Skillman had previously carried it, being $28,000 per annum. The contract was made by Miller, postmaster at Santa Fé, under the instructions of the Postmaster General, because David Wasson, the regular contractor on that route, did not appear on the 1st of July, 1854, to commence the service. This David Wasson had bid off the route at $16,750 per annum, and executed and delivered his bond for the performance of the service June 21, 1854. Wasson should have been at Santa Fé and San Antonio on the 1st of July, 1854, to receive and carry the mail between the points aforesaid. Wasson not appearing at San Antonio 1st July, 1854, the postmaster, J. Bowen, gave the mail to the old contractor, Captain H. Skillman. Wasson not appearing the 1st July, 1854, at Santa Fé, as that was the head of the route, the postmaster at Santa Fé, under instructions from the Postmaster General, on the 2d of July, 1854, contracted with petitioners, Houghton & Brevoort, for carrying the mail, and it was delivered to them. Houghton & Brevoort did in fact carry the mail from Santa Fé to San Antonio during the months of July, August, September, October, November, and December, a period of six months. They carried the mail from San Antonio to Santa Fé in the month of July, 1854. They carried the mail from El Paso, Texas, to Santa Fé, a distance of 350 miles, in the months of August, September, October, and December. Wasson claims to have carried the mail from San Antonio to El Paso in the months of August, September, October, and December, a distance of 600 miles; and in the month of November, 1854, Wasson carried the mail from San Antonio to Santa Fé, 1,000 miles. Brevoort & Houghton regularly applied for the return mail at San Antonio during the entire six months, during all which time they delivered the down mail from Santa Fé to San Antonio. The return mail the postmaster at San Antonio refused to give them, for the reason that he considered Wasson entitled to it. Wasson, on arriving at El Paso, could not get the mail, because the postmaster at El Paso considered Houghton & Brevoort entitled to it, and delivered it to them. Wasson could not get the mail at Santa Fé because the postmaster at

Santa Fé did not think that, under the instructions from the Postmaster General, he ought to deliver the mail to any one but Houghton & Brevoort until a person showing himself to be the lawful agent of Wasson, and a sworn mail-carrier, presented himself and demanded it.

Such are the facts of the case as to the service and by whom performed. Now, notwithstanding it is conceded that Wasson was the contractor on this route, No. 12900, from July 1, 1854, until the 13th of March, 1855, it will be evident to the court that Wasson had really, contrary to law and his contract, transferred the route to George H. Giddings, who was ostensibly demanding the mail as agent of Wasson, but in reality as assignee and owner of the route by purchase, which purchase was not recognized by the Post Office Department until the 13th of March, 1855. But Mr. Giddings gets an act of Congress passed 3d of March, 1855, giving him a compensation of $35,500 per annum for the year commencing 18th of August, 1854, *for carrying the mail according to the contract under which said service is now being performed.* Now, what contract was service being performed under at the date of the passage of said act of 3d March, 1855? Not under any contract with Giddings, for none was made with him until the 7th day of April, 1855, more than a month after the passage of said act. Service was being performed under the contract of Wasson. Now, notwithstanding that act of Congress would apparently give all the pay to Giddings on that route from the 18th August, 1854, yet the Attorney General has very rightfully decided that if Giddings did not do the service, it would be wrong to pay him; and if Houghton & Brevoort did do the service, it would be another wrong to keep them from getting the pay.—(See Opinions of Attorneys General, vol. 7, page 617.)

It is not worth while to consider whether the postmaster at San Antonio did right or wrong in giving the mail to Wasson or his pretended agent, nor is it worth while to consider whether the postmaster at Santa Fé and El Paso did right in giving the mail to Brevoort & Houghton, or refusing to give it to Wasson or his pretended agents. The right of Brevoort & Houghton to pay for their service in carrying the mail is not dependent upon the point whether the action of the postmaster was right or wrong. The postmasters were agents of the government, acting within the scope of their authority, and if they did make a mistake or judge erroneously, the government is to bear the loss, and not the innocent contractors, who have spent their time, labor, and money, and risked their lives, in the transportation of the mails. If the question is which of two innocent persons is to bear the loss resulting from the misconduct of another, the law makes the loss fall upon the shoulders of him whose agent caused the loss.

Brevoort & Houghton, between the 1st of July, 1854, and 30th December, 1854, carry the mail eight thousand miles, and get pay for it the sum of $5,858 69. Giddings, within the same dates, carries the mail but four thousand miles, and gets for it $10,891 31. Is this justice; is it right; is it law? If the amount appropriated by Congress as compensation on that route, $33,500, was divided between Giddings, Houghton & Brevoort in proportion to the number of miles each carried the mail, $11,107 would be due Brevoort & Houghton, and $5,583 due Giddings; and deducting the amount already paid

Brevoort & Houghton, $5,858 69, it will be found that there is yet due them $5,308 31. But are they not justly entitled to pay for all the time their hands, stock, and carriages were running on the road? Undoubtedly they are entitled to pay. On taking the mail from Santa Fé to El Paso, their stock, carriages, and horses had to return to El Paso to take the mail up from El Paso to Santa Fé, and to receive the mail at Santa Fé for the downward trip. As the whole object of the act of 3d March, 1855, was to increase the compensation for service on mail-route No. 12900, the benefit of that increased compensation inures to the person or persons who performed the service Is Wasson entitled to any favor from any quarter? None. He takes away the business of Captain Skillman, who had distinguished himself by the successful establishment of that route through an uninhabited country, full of hostile Indians, no less than by his gallant conduct at the battle of Sacramento. He proposes to carry the mail at $16,750 per annum; never commences the service, and secretly assigns it, in violation of law and his contract, to Giddings. Giddings, the private holder of the contract, as assignee, gets an act passed increasing the pay to $33,500, and then gets his assignment recognized, and comes as the real contractor, and claims the money for Brevoort & Houghton's services. From a careful examination of all the facts in this case, it is clear to my mind that the court will consider that there is due to Brevoort & Houghton the sum of $16,750, for six months' service, at $33,500 per annum; from which deduct the $5,858 paid, and it leaves still due them the sum of $10,892. The present is a case affording the court an opportunity not only to do justice to Brevoort & Houghton, but to administer a useful lesson to others, who ruin their neighbors by under-bidding them, and then protect themselves from ruin by appeals to the sympathy of Congress.

JOHN S. WATTS,
Attorney for Petitioners.

IN THE COURT OF CLAIMS.

BREVOORT & HOUGHTON *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim under a mail contract entered into by the postmaster at Santa Fé, New Mexico, in 1854, *for carrying the mail from that place via El Paso to San Antonio, in Texas, on which* $8,142 31 *are demanded.*

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That prior to the 30th of June, 1854, Henry Skillman had carried the mail from Santa Fé, New Mexico, to San Antonio, Texas, monthly each way, at the rate of $28,000 per annum.—(*Postmaster General's statement*, Record, p. 5.)

Second. That David Wasson became the contractor for carrying it on the same route once a month each way for four years from the first day of July, 1854, at the rate of $16,750 per annum.—(*Dundas's* letter, Record, pp. 23, 28; Contract, Record, p. 13.)

Third. That the postmaster of Santa Fé was instructed that in case that neither the contractor nor any one for him appeared to take the mails, he should make a temporary contract at the lowest rates practicable for their transportation, and to report to the department.

Mr. *Dundas* says: "In the notice of the letting, issued soon after issuing the acceptance, to the postmaster of Santa Fé, he was instructed, in case the accepted bidder failed to appear on the 1st of July, to engage service, (temporary, of course,) and report to the department. This was to be engaged at the lowest rates practicable."—(Record, p. 28.)

"The postmaster of Santa Fé was instructed, in case he (Wasson) failed to appear on the 1st of July, 1854, to engage temporary conveyance till he, or some regularly authorized contractor, should apply for the mail, at lowest practicable rates."—(Record, p. 23.)

Fourth. Wasson or his representative applied for and received the mail at San Antonio on the first of August, 1854, and he applied for it at Santa Fé on the first of October, 1854.

Mr. *Dundas* says: "He (Wasson) did not apply for the mail at San Antonio till August 1, and at Santa Fé till October 1, of that year."—(Record, p. 23.)

Bowen, postmaster at San Antonio, in a letter dated September 19, 1854, says: "I shall continue to give the mail at this end of the route to the agent of David Wasson, who commenced service August 1, without further reference to this high-handed measure, until the department shall take such steps as may be deemed necessary. On the 27th of August I replied to your letter of the 11th, stating that the agent of David Wasson, a Mr. Thomas, commenced service on route 12900, Santa Fé to this office—commenced service August 1 from this end of the route."—(Record, p. 25.)

Mr. *Miller*, postmaster at Santa Fé, in a letter dated December 30, 1854, says: "On the 30th September, 1854, a person by the name of Johnson Thomas, representing himself to be the agent of Wasson, and demanding the mail in the name of Wasson, but as he had not the proper proof to show that he was entitled as agent for said Wasson, nor any proof that Wasson had complied with the law in giving bond, &c., and as he had not been known as a mail-carrier, I declined to deliver the mail to him.

On the first day of November, 1854, a Mr. Broad demanded the mail as agent for Wasson, but as he had no proof of any kind whatever to show for whom or by whose authority he was acting, and not being a sworn mail-carrier, I declined to deliver the mail to him.

On the first day of December, 1854, a Mr. Frank M. Giddings demanded the mail in the name of D. Wasson, and exhibited a document purporting to be a copy of a contract with D. Wasson, but as said document did not have the name of any of the contracting parties signed thereto, nor did it have any certificate or seal of the Post Office Department to show that it had emanated from the department, I did not deem it to be of any value; and as said Giddings did not exhibit any copy of an oath of office as mail-carrier, I refused to deliver the mail to him."—(Record, p. 10.)

Fifth. From August 1, 1854, Wasson, or his representative, applied regularly every month at the post office in San Antonio for the

mail for Santa Fé, and received the same during the residue of that year.--(*Bowen's* Monthly Register, Record, p. 6.)

Dundas's statement: "The postmaster of San Antonio put the mails going north all this time (from August 1, 1854, to the end of the year) in charge of Wasson's agents, or rather those of his transferee, Mr. Giddings."—(Record, p. 23.)

"He (Wasson) commenced service, through his assignee and agent, George H. Giddings, by taking the mails from San Antonio, on the 1st of August, 1854; but, owing to the refusal of the postmaster at El Paso to let him have the bags after the overhauling at his office, he did not proceed then to Santa Fé on that trip. Mr. Giddings again left San Antonio with the mail on the 1st of September, and on the first day of the following months, but was refused the return mail by the postmaster at SantaFe."—(Record, p. 28.)

Sixth. That Wasson, or his representative, was interfered with at El Paso in August, 1854, which prevented the mail being taken to and delivered at Santa Fé, and which occasioned the failure to demand the mail on the return trip on the 1st of September of that year.

Mr. *Dundas* says: "But owing to the refusal of the postmaster to let him (Giddings) have the mail-bags after overhauling at his office, he (Giddings) did not then proceed to Santa Fé on that trip."—(Record, p. 28.)

Hubbell, postmaster at El Paso, under date of December 10, 1854, admits that he refused to give Wasson or his representative the mail, and attempts to justify his refusal.—(Record, p. 27.)

Mr. *Dundas* says: "On the trip north, in August, (say about the 17th of that month,) the postmaster at El Paso refused to let his (Wasson's) carriers have the mail after it was overhauled there; consequently they turned about for San Antonio."—(Record, p. 23.)

Seventh. On the first of October, 1854, Wasson or his representative applied to the postmaster at Santa Fé for the mail to take to San Antonio, and the postmaster there refused to let him take it. He also applied, and it was refused, on the first of November and December of that year.

Mr. *Dundas* says: "Mr. Giddings again left San Antonio with the mail on the first of September and on the first of the following months, but was refused the return mail by the postmaster at Santa Fé."—(Record, p. 28.)

Miller, postmaster at Santa Fé, admits that the mail was demanded on the 30th September by a person in behalf of Wasson, but that he refused to deliver it, and that it was also demanded in his behalf on the first of November and December, and also refused.—(Record, pp. 9, 10.)

Eighth. Brevoort & Houghton never carried the mail from San Antonio under their arrangement with the postmaster at Santa Fé, but carried only the downward mails from the latter to the former place.

Mr. *Dundas* says: "The postmaster of San Antonio put the mails going north all this time (from the first of August, 1854, to the end of the year) in charge of Wasson's agents, or, rather, those of his

transferee, Mr. Giddings."—(Record, p. 23; postmaster at San Antonio, register, Record, p. 6.)

Ninth. Plaintiffs have been paid for the services which they rendered, $5,858 69.—(Record, pp. 12, 29.)

Tenth. The postmaster at El Paso and Santa Fé offered to the department frivolous excuses for not delivering to Wasson or his representatives the mails when they presented themselves and demanded them, which excuses were not approved by the department.

Mr. *Dundas* says: "The reasons assigned by the postmaster at Santa Fé for refusing the agents of Wasson the mails on and after 1st of October, 1854, viz: that their title to receive them was not sufficiently authenticated, was unsatisfactory to the department then, and is so now."—(Record, p. 28.)

"It (the department) further took the view that Brevoort & Houghton should have withdrawn from the road, and that the postmaster at Santa Fé should have withheld from them the mails after October 1, 1854, when the carriers of the regularly authorized contractor applied for the mails at that place."—(Record, p. 24.)

Eleventh. Congress passed, on the 3d of March, 1855, a law which contains the following:

"For compensation to George H. Giddings for carrying the mail on route number twelve thousand nine hundred, from Santa Fé, New Mexico, to San Antonio, Texas, monthly each way, according to the contract under which said service is now being performed, the sum of thirty-three thousand five hundred dollars per annum, commencing with the eighteenth day of August, eighteen hundred and fifty-four, and continuing one year, and in lieu of the compensation therein stipulated."—(10 U. S. L., 684.)

Twelfth. Under this law Giddings, who represented Wasson, was paid for carrying the mail from the 18th August, 1854, to the end of that year, the sum of $12,380 43.—(Record, p. 29, pp. 20, 21.)

Thirteenth. Skillman, who had been the former contractor on the route, took the mail at San Antonio for Santa Fé on the first of July, 1854.—(Postmaster's register, Record, p. 6.)

Bowen, postmaster at San Antonio, under date of the 27th August, 1854, says: "The service up to that date (August 1) having been performed by the late contractor, Henry Skillman, who reported himself as being verbally authorized by the department to continue the service until the new contractor should commence. By this report he is employed by the department, but I am not advised on what terms."—(Record, p. 26.)

Fourteenth. The mail service, under plaintiff's contract with the postmaster at Santa Fé, was performed, not by them, but by Henry Skillman, the old contractor, who had been underbid by Wasson, and he took the mail at San Antonio for Santa Fé before he could have known of their temporary contract with the postmaster at the latter place.

The contract bears date at Santa Fé on the second of July, and could not have been known at San Antonio the day before when Skillman took the mail from that place. And as to that trip, from San Antonio to Santa Fé, the mail was not carried by Brevoort & Houghton at all, nor was it carried under their direction.

Fifteenth. There is no evidence that Brevoort & Houghton owned any teams or conveyances, or incurred any personal outlay in carrying the mails.

Sixteenth. As Brevoort & Houghton resided at Santa Fé, they must have known that Wasson or his representatives brought the mail from San Antonio from the first of August, and that he or they presented themselves on the first of October, November, and December at Santa Fé to receive the mails for San Antonio, and there is no evidence that Brevoort & Houghton ever carried the mail from San Antonio to Santa Fé or El Paso. What occurred at Santa Fé and with their drivers there and at El Paso ought to have put them upon inquiry in relation to the real state of all these matters, and if they had inquired and acted fairly they would not have further claimed or carried the mails.

Seventeenth. They also must have known that the mail was never delivered to them or their agent at San Antonio at any time, and that Wasson or his representative had carried it and did so under the contract previously entered into, and yet they continued to demand and receive the mails after they knew that they were demanded by the contractor or on his behalf, and that he was ready and willing to fulfil his contract.

Eighteenth. There is no evidence that Brevoort & Houghton, or either of them, or any one who acted in their behalf in carrying the mail, was sworn as a mail-carrier.

Nineteenth. There is no evidence that the persons to whom the postmaster at El Paso gave the mails produced to him any more evidence that they were entitled to receive the same, or were sworn as carriers, than was produced by Wasson and those representing him.

Twentieth. That no one of the reasons assigned by the postmasters at Santa Fé and El Paso for not delivering the mails to Wasson or his representatives has any validity.—(Hubbell's letter, Record, p. 27; Miller's letter, Record, p. 9.)

Twenty-first. From the whole tenor of the evidence in the record, it is apparent that the plaintiffs and the postmasters at El Paso and Santa Fé united in the purpose of preventing the new contractor, Wasson, from performing his contract, but that they sought to continue the service of Skillman in spite of Wasson's rights and the obligations of the Post Office Department to him, and its wishes to act in good faith towards him.

Twenty-second. There is no evidence what were the terms and conditions of Henry Skillman's contract which is referred to and adopted in the contract under which the plaintiffs claim, further than the mere statement of the amount which he had received.

LEGAL PROPOSITIONS.

FIRST.—*The postmaster at Santa Fé was not authorized to enter into the contract under which the plaintiffs claim.*

The authority conferred was, in case Wasson "failed to appear on the 1st of July, 1854, to engage temporary conveyance till he or some regularly authorized contractor should apply for the mail, at the lowest practicable rates," and "to report to the department."—(Record, pp. 23, 28.)

This temporary service authorized him to employ a person to carry the mail from Santa Fé to San Antonio, and not to carry from San Antonio to Santa Fé. The contract made was wholly different. He contracted for carrying the mail both ways, not in conformity with requirements of Wasson's contract, but upon the terms and conditions of Skillman's contract.

The contract made provides "to carry the United States mail monthly, by way of El Paso, between Santa Fé, New Mexico, and San Antonio de Bexar, in the State of Texas, upon the same conditions and for the same consideration as specified in a certain contract made by the Post Office Department of the United States with Henry Skillman for the year ending on the last day of June, A. D. 1854, and to continue *said* contract until such time as the same shall be received at Santa Fé or San Antonio aforesaid, by any contractor or contractors who shall have taken the contract for said mail for the year ending on the 1st day of July, A. D. 1854."—(Record, p. 5.)

He further contracted, "in case of failure on the part of any contractor or contractors to receive the mail at Santa Fé or San Antonio aforesaid on the days designated in their said contracts, to pay or cause to be paid by the Post Office Department of the United States, to the said Brevoort & Houghton, in consideration of carrying and delivering said mail aforesaid, the compensation named in the said contracts with the said Henry Skillman, or at that rate, so long as the said Brevoort & Houghton shall carry said mail and comply with the obligations of said contract."—(Record, p. 5.)

Here are broad departures from his authority:

1. He attempts to fasten upon the department all the provisions of Skillman's contract.

2. He contracts for carrying the mail both ways.

3. He contracts for a continuance of the service, not to the time the contractor or his agent should *apply* for the mails, but until the contractor should *receive it*.

4. He extends it until the contractors should call for the mail under a contract which had previously expired, which could not happen.

5. He contracted that the plaintiffs should be the carriers, and be paid in case of any failure at any future day to fulfil their contract. This is the legal effect of the provisions inserted in the contract.

The powers thus exercised were not conferred by the department, and could not have been, under the existing laws. Under the practice of the department, the postmaster at the San Antonio end of the route had the same power to contract to send the mail from his office. The postmaster at each end of a route should receive the same instructions to employ temporary service, and without it the mail would not start so as to form its connexions and arrive at the end of the route in season. Without such an arrangement, Santa Fé would have been delayed two months in the receipt of her mail, because it would have taken the plaintiffs a month to go over the route to San Antonio, and a month to return.

By adopting Skillman's contract he may have assumed heavy responsibilities, and he fastens it upon the department until he (the postmaster) should see fit to give the mail to some other person, and

until some one should receive it under an expired contract, which could never happen. He also gave them the monopoly of filling all failures in future. This exercise of unauthorized power renders the whole contract null and void.

SECOND. *The plaintiffs have been fully compensated for all the services actually rendered by or for them in transporting the mail.*

The plaintiffs did not carry the mail at all from San Antonio to El Paso. Skillman took it once only, on the first of July, and on his own account. This was before the contract with the plaintiffs.

It is true, they took the mail from Wasson at El Paso, and out of the hands of the regular contractor, to carry from there to Santa Fé. But this was not within their contract, which only provides for carrying until such time as the mail should be received by the contractor at San Antonio or Santa Fé. When that occurred, which happened on the first of August, at San Antonio, then the right to carry and be compensated ceased. It follows that the only transportation for which compensation could be demanded under the contract was limited to carrying from Santa Fé, and this must be limited to the time when the contractor failed to be ready at that place or at San Antonio to take the mail. This limits the time of lawful transportation from Santa Fé to the month of July, and that to carrying one way, being half-service for one month, and they only took it at Santa Fé three times before the contractor called for it. Whereas they were paid for full service for the months of July and August, and half-trip in September. So it appears that the plaintiffs have been, in fact, over compensated for the services actually rendered under authorized employment, and more than they were legally entitled to.

THIRD. *The whole transaction on the part of the plaintiffs and the postmasters at Santa Fé and El Paso, after the arrival of the July mail at El Paso from San Antonio, and after the demand of it at Santa Fé by Wasson, was a fraud upon the latter and upon the Post Office Department, and therefore the plaintiffs cannot recover.*

From the record, it is perfectly apparent that the plaintiffs and these postmasters were fully apprised of the contract with Wasson, and understood all about his efforts to perform it, and were engaged in a common purpose to prevent his doing so, and that the contract between the postmaster at Santa Fé and the plaintiffs had for its object to defeat the execution of that contract, and that the acts of all of them were designed to accomplish the same purpose. This want of good faith must prevent a recovery.

FOURTH. *There being no authorized and valid contract between the department and the plaintiffs, the latter are only entitled to such compensation as their actual services were really worth.*

The contract as made was unauthorized, and therefore not valid, and cannot measure the plaintiffs' compensation. In such cases the rule of compensation is, to pay what the services are really worth. Nothing more can be legally claimed. In this case the plaintiffs

have not shown what said services were actually worth. They having omitted all direct proof upon the subject, we must resort to the best evidence which the record contains applicable to the question. This is to be found in Wasson's contract, in which he stipulated to carry the mail both ways and perform certain incidental services, at the rate of $16,750 per year. Giddings, when he succeeded to the rights of Wasson, agreed to carry the mail and perform these other services at the same rate. This would be at the rate of about $1,395 per month. The season when the plaintiffs carried the mail was in the summer and fall, when grass was plenty on the route and the roads good. It was worth much less per month than during the winter, when grass is scarce and the roads wet and bad. If they had carried the mail both ways during the whole time charged, (six months,) and at the rate of Wasson's contract, the service would only amount to $8,375, being only $2,517 more than they have been already paid. But they only carried it one way, and in that case would only be entitled to half that sum, to wit: $4,287, and, consequently, they have already received $1,571 more than the services were worth. Surely they cannot be entitled to anything more as a matter of equity and good conscience. They have already received as much into $2,617 as they ought to have received if they had in good faith actually carried the mail both ways for six months. But they neither carried the mail both ways, nor did they act in good faith. Upon no ground are they entitled to more than they have actually received.

R. H. GILLET,
Solicitor.

APRIL 18, 1859.

IN THE COURT OF CLAIMS.

May 21, 1860.

ELIAS BREVOORT *et al. vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the court.

The petitioners set forth in their petition that under a contract made with the United States July 2, 1854, (and shown in the record,) they carried the mail upon route No. 12900, from Santa Fé, by the way of El Paso to San Antonio de Bazar, for the term of six months; that the United States have paid them for only two and a half months' service, and are now indebted to them in the sum of sixteen hundred and fifty dollars.

The evidence shows (p. 13, &c.,) that the regular mail contractor on the route was David Wasson, and that on his failure to present himself for service at the commencement of his term, viz: July 1, 1844, Mr. Miller, the postmaster at Santa Fé, contracted with Breevoort & Houghton for temporary mail service, until such time as the regular mail contractor should appear and commence his service; that under

this contract the petitioners carried the mail from Santa Fé, the northern extremity of the route, by the way of El Paso, the intermediate post, to San Antonio, the southern extremity of the route, on the downward trip until December 1, 1854, and on the upward trip from El Paso to Santa Fé till November, 1854, when Mr. Giddings, the agent of Wasson, carried the mail on the upward trip from El Paso to Santa Fé, (pp. 8, 9.)

It also appears that Mr. Wasson, by his carrier, rendered himself for service on the route, at San Antonio, August 1, 1854, and there received the mail from the postmaster, Mr. Brown, and carried it to El Paso, and continued to do so thereafter; that on the 17th of August Mr. Wasson's carrier demanded the mails of Mr. Hubbel, the postmaster at El Paso, and in September, October, November, and December of Mr. Miller, the postmaster at Santa Fé, but these postmasters refused the applications of Mr. Wasson's carrier, on the ground that they were not satisfied that he was duly qualified and authorized to receive it, and they continued to deliver the mails at their respective offices to the petitioners, who continued to carry them, as before stated.

In this conflict of claims, the right of the petitioners as against the regular contractor must depend on the words of their contract, and its stipulation is express that it was to continue until such time as the mail should "be received at Santa Fé *or* San Antonio aforesaid by any contractor or contractors who shall have taken the mail for the year beginning July 1, 1854." Wasson was such contractor, (pp. 13, 14, 15,) and the evidence is clear, and put in by the petitioners, (p. 10,) that Wasson applied for and received the mail and "made his commencement of service under his contract at San Antonio, August 1, 1854." From that time, therefore, the contract with the petitioners was determined, and their rights under it to carry the mail ceased; at that time, also, the mail was refused them at San Antonio, and that was substantially notice to them, if under their contract notice was necessary, that the regular contractor had applied for and received the mail at the place stipulated. That the postmaster at San Antonio delivered the mail to Wasson's carrier gives the presumption that he was qualified to receive it, and there is no evidence to the contrary, and indeed Woods, the carrier of Wasson, whose affidavit was admitted and used without objection at the hearing, testifies that "on the 1st of August, 1854, he was sworn as carrier on the said route for said contractor." And no evidence is necessary that the carrier was qualified when he applied at El Paso and Santa Fé, for by the contract the application at San Antonio was all that was required to determine it. This the petitioners were bound to know, and their rights cannot be extended, nor the rights of the regular contractor reduced, by the procedure of the postmasters at Santa Fé and El Paso.

It then appears that the United States have paid the petitioners for carrying the mail in July and August for the entire round trips, and for the downward trip in September, and this was more than they were entitled to under their contract upon the case shown here.

On the whole case we are of opinion that the petitioners are not entitled to the relief they claim.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 267.

JAMES W. KNAGGS, ADMINISTRATOR OF WHITMORE KNAGGS.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JAMES W. KNAGGS, ADMINISTRATOR OF WHITMORE KNAGGS, vs. THE UNITED STATES.

1. The petition of the claimant.
2. Testator's will and proceedings of the court of probate thereon, transmitted to the House of Representatives
3. Other documentary evidence of the claimant transmitted to the House of Representatives.
4. Evidence of the government transmitted to the House of Representatives.
5. Claimant's brief.
6. Solicitor's brief.
7. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

To the honorable the judges of the Court of Claims:

The petition of James W. Knaggs, administrator with the will annexed of Whitmore Knaggs, respectfully represents:

That his testator, Whitmore Knaggs, for some years prior to 1812, was in the service of the United States as Indian interpreter and assistant agent.

That when the war commenced with the Indians and the government of Great Britain, in 1812, the said Whitmore Knaggs was placed in command of a company of Michigan militia.

That the said Whitmore Knaggs was, in his own right, the owner of a farm at Spring Wells, near Detroit, on which were erected a dwelling-house, out-houses, storehouses, barns, and stables.

By order of the officers of the United States commanding in this district the said property of said Knaggs was taken for the use of the United States.

His storehouses were used as a place of deposit of public military stores, arms, &c. His houses, out-houses, barns, &c., were used as barracks, and his farm converted into a military station, at which troops, partly regular and partly militia, were stationed, under the command of a regular officer of the army of the United States.

By this act of the United States this property was severed from the mass of peaceful individual property; was appropriated to the use of the United States, and had a hostile military character impressed upon it.

When the British and their Indian allies invaded the northwestern portion of the United States, in 1812, this property was seized, the troops of the United States driven from it, and, on the day before Hull's surrender, the property was sacked, the buildings were seriously damaged and mutilated, and personal property of great value taken or destroyed by the enemy.

Your petitioner has no doubt, and therefore avers, that this property was thus damaged, taken and destroyed, because of its occupancy by the United States and the military character thus impressed on it.

Your petitioner is advised that the United States became bound to indemnify his testator for these losses, under the fifth amended article of the Constitution of the United States.

The Congress of the United States, on the 9th day of April, 1816, passed an act authorizing payment.—(See St. L., vol. 3, page 261, chap. 40.) This act was amended by an act passed 3d March, 1817, (vol. 3 St. L., page 297, chap. 110,) and was further amended by an act passed 20th April, 1818, (vol. 3 St. L., page 465, chap. 124.)

The testator, Whitmore Knaggs, presented his claim for these damages to the government, and it was referred to Richard Bland Lee, the commissioner appointed under this act.

To ascertain fully the facts in this case, a sub-commissioner was appointed, and the commissioner took much testimony, which is now in these papers. R. B. Lee, the principal commissioner, reported the

substance of the testimony taken, that it established the loss of the claimant to the amount of $8,964 68¼; that it was fully proved that the property was occupied by the United States for military purposes, and destroyed in consequence of such occupation; yet, inasmuch as by instructions of the President of the United States, of the 21st of October, 1816, it was ruled that the law of 1816 did not provide for the payment of partial and consequential damages, the destruction must be total to entitle the claimant, &c.

This claim, he says, must depend upon the equity and beneficence of Congress for payment.

This decision, with accompanying papers, was not reported to Congress, as far as your petitioner is informed, but, with other papers, were, on the termination of the service of said Lee, returned to the office of the Third Auditor of the Treasury.

The testator, Whitmore Knaggs, during his lifetime, diligently prosecuted this, with other claims, against the government, and since his death the payment of this claim has been pressed by his personal representatives, but ineffectually.

This claim was presented by petitioner to Congress, as follows, and referred to Committee of Claims: 1st sess. 21st, 2d sess. 23d, 1st sess. 24th, 2d sess. 31st Congresses, and no report has ever been presented to Congress upon the claim.

Your petitioner believes that the sum ascertained by Commissioner Lee is less than is due his testator. That no default has existed in the prosecution by the testator or those claiming under him, but that default has been made by the officers of the government in their action upon this claim, whereby payment has been delayed.

But as at this length of time he may not be able to make out the details of the amount actually due his testator beyond the sum ascertained by said Lee to be due to him, he is willing to take that sum, and therefore prays judgment for that amount, with interest.

This claim belongs to your petitioner, as administrator with the will annexed of Whitmore Knaggs, as assets to be disposed of under the provisions of the will.

Your petitioner further states that he presented his petition asking relief in the premises to the present Congress of the United States, and by resolution and order of the House of Representatives of the 13th December, 1856, the petition, with the papers, was referred to this court for its judicial action.

JAS. W. KNAGGS,
By his attorney, S. S. BAXTER.

CITY OF WASHINGTON, D. C.

This 2d day of February, 1857, personally appeared before me, a justice of the peace for said city, Emery D. Potter, agent of petitioner, and made oath, according to law, that the facts stated in this petition of his own knowledge are true, and those stated on the information of others he believes to be true.

Given under my hand this day and year above stated.

J. H. GODDARD, *J. P.*

The last will and testament of Whitmore Knaggs, to wit:

In the name of God, Amen. I, Whitmore Knaggs, of the township of Spring Wells, in the county of Wayne, in the Territory of Michigan, being weak of body, but of sound mind, do make, publish, and declare this to be my last will and testament:

1st. I hereby constitute and appoint my wife, Josette Knaggs, the sole executrix of this my last will and testament.

2d. I desire that all my just debts be paid by my said executrix.

3d. I give and bequeath to my said wife, Josette Knaggs, her heirs and assigns forever, all that farm on which I now reside, with its privileges and appurtenances, to be disposed of as she may deem expedient.

4th. I give and bequeath to my said wife, Josette Knaggs, all my personal estate of every name and nature, to dispose of as she may judge most expedient.

5th. I give and bequeath to my son, Peter W. Knaggs, and to his wife, Catherine Knaggs, the sole and exclusive use and occupation of three tracts of land which I heretofore purchased of Jacob Dix and Francis Remand, lying near and in the rear of Prairie Ronde, in the said county of Wayne, for and during their natural lives, and the life of the survivor of them, and after their decease to the heirs of the said Catherine and Peter W. Knaggs in fee simple.

6th. I give and bequeath to my son, James Knaggs, all that tract of land or farm lying on the border of the Miami river, adjoining the tract heretofore conveyed by me to my son, George B. Knaggs, and containing about three hundred acres, to him and his heirs and assigns forever.

7th. I give and bequeath to my daughter, Elizabeth Knaggs, all that farm on the border of the river Raisin, which was formerly conveyed by me to my son, John Knaggs, and which has since been reconveyed to me in exchange for the farm on which he, the said John, now lives, at the foot of the rapids of the Miami rapids, to her and her heirs and assigns forever.

8th. I request my said executrix, in consideration of the faithful services of my colored servant, Mary, to give to her the sum of one hundred and twenty-five dollars, and said legacy is to be considered a charge on my personal estate before given to my said wife, and I recommend said Mary to the kind care and protection of my said wife.

9th. I hereby revoke and annul all wills and codicils heretofore made by me, and wish and intend this as my last will and testament.

In testimony whereof, I have hereto set my hand and seal this 3d day of May, 1827.

W. KNAGGS. [L. S.]

Signed, sealed, published, and declared in pesence of us, who signed our names by request of the testator.

CHARLES LARNED.
THOMPSON MAXWELL.
ANTOINE METTE.

TERRITORY OF MICHIGAN, *Wayne County, ss:*

At a court of probate for the county of Wayne, in the Territory of Michigan, holden at the register's office, in the city of Detroit, on the 4th day of June, A. D. 1827, the foregoing instrument, purporting to be the last will and testament of Whitmore Knaggs, late of the county aforesaid, deceased, was presented me for probate by Josette Knaggs, executrix, therein named; and Charles Larned, Thompson Maxwell, and Antoine Mette, three of the subscribing witnesses thereto, at the same time, appear and make oath that they saw the said Whitmore Knaggs sign, seal, and heard him pronounce and declare the said instrument to be his last will and testament, and that they subscribed their names as witnesses in the presence of said testator, (and at his request,) and that he was then, to the best of their discernment, of a sound and disposing mind.

I do therefore, by virtue of the power and authority given to me by the laws of the Territory aforesaid, hereby allow of the said instrument as the last will and testament of said deceased, and do decree that it have full force and effect as such, according to the law of the Territory in such cases made and provided.

Given under my hand and the seal of the probate office the day, [L. S.] month, and year last above written.

HENRY S. COLE,
Judge of Probate, Wayne.

At a special court of probate for the county of Wayne, in the Territory of Michigan, holden at the register's office, in the city of Detroit, on the 25th day of August, A. D. 1827—

Whereas heretofore, to wit, on the 4th day of June last past, the foregoing instrument, purporting to be the last will and testament of Whitmore Knaggs, late of the county aforesaid, deceased, was presented to me for probate by Josette Knaggs, the executrix therein named, and thereupon probate thereof was had, and letters testamentary thereon issued to the said Josette Knaggs; and whereas afterwards, to wit, on the 6th day of August, present, for cause shown, the letters testamentary so as aforesaid granted to the said Josette Knaggs were revoked, and application was duly made by James W. Knaggs for letters of administration "*cum testamento annexo*" on the estate of the said Whitmore Knaggs, which said application was thereon granted.

TERRITORY OF MICHIGAN, *Wayne County, ss:*

By the Hon. Henry S. Cole, judge of the probate of wills, &c., within and for the county of Wayne, in said Territory.

To all unto whom these presents shall come, greeting:

Whereas a copy of the original instrument, ("the probate thereof having been heretofore had,") allowed as the last will and testament of Whitmore Knaggs, late of said county, deceased, who had, while

he had lived, and at the time of his decease, goods, chattels, rights, or credits in the county aforesaid: Know ye, therefore, that I do, by virtue of the power and authority given to me in such case by the laws of the Territory aforesaid, hereby commit the execution thereof, and the administration of the said deceased whereof he died seized and possessed in said county, unto James W. Knaggs, ("one of the heirs of said deceased,") well and faithfully to execute said will and to administer the estate of said deceased according thereto, who accepted of the said trust and gave bond, as the law directed, to return upon oath a true and perfect inventory of said estate into the probate office of said county within three months; and also to render a just and true account of his proceedings thereon, upon oath, within one year from the date hereof; and also to render a just and true account of his proceedings thereon, upon oath, when thereunto lawfully required.

In testimony whereof, I have hereunto set my hand and caused the seal of the probate court to be affixed to these presents this [L. S.] twenty-fifth day of August, A. D. eighteen hundred and twenty-seven.

HENRY S. COLE.
Judge of Probate, Wayne.

STATE OF MICHIGAN, *County of Wayne,* } *ss:* Probate court for the county of Wayne.

I, Elijah Hawley, jr., judge of probate for said county of Wayne, and acting as clerk for said court, do hereby certify that I have compared the foregoing copy of the last will and testament of Whitmore Knaggs, deceased, and the probate thereof, and the order of said court appointing James W. Knaggs administrator *de bonis non* with the will annexed of the estate of said deceased, and the letters of administration issued to the said James W. Knaggs, with the original records thereof now remaining in the probate office for said county, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said probate court, at the city of Detroit, this fifth day of November, A. D. 1857.

E. HAWLEY, JR.,
Judge of Probate.

STATE OF MICHIGAN, *County of Wayne, ss:*

I, Elijah Hawley, jr., judge of probate for said county, and presiding judge of the probate court for said county, do hereby certify that the foregoing exemplification is authenticated in due form.

In witness whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at the city of Detroit, this fifth day of November, A. D. 1857.

E. HAWLEY, JR.,
Judge of Probate.

To the Hon. E. Hawley, jr., judge of probate for the county of Wayne, in the State of Michigan:

The petition of George B. Knaggs, who is of the age of twenty-one years and upwards, of the county of Wayne, respectfully shows:

That Whitmore Knaggs, late of Spring Wells, in said county of Wayne, departed this life on or about the fifth day of May, in the year of our Lord 1827, leaving a last will and testament, as your petitioner is informed and verily believes, in which Josette Knaggs, the widow of said deceased, was appointed sole executrix thereof; that said last will and testament was duly proven before the judge of the probate court of said county of Wayne, and letters testamentary duly issued to said Josette Knaggs on the 4th of June, 1827; that afterwards, at the request of said Josette, said letters were revoked by said probate court, and on the 25th day of August of the year last aforesaid letters of administration with the will annexed were duly issued to James W. Knaggs, a son of said deceased; that afterwards the said James W. Knaggs removed to the State of Ohio, where he now resides, leaving certain property and assets of the said deceased still unadministered; that your petitioner has, to the best of his ability, estimated and ascertained the amount of such property, and that the same does not exceed in value the sum of ———.

Your petitioner further shows that the said deceased at or immediately previous to his death was an inhabitant of the county of Wayne aforesaid; that he was possessed of both real and personal property, situate and being in said county of Wayne, to be administered; that said deceased had at the time of his death a claim against the United States, which still remains unadjusted and unpaid by said United States, and that it is necessary that an administrator of said estate should be appointed for the purpose of prosecuting said claim.

Your petitioner further shows that the names and residences of the heirs-at-law of said deceased, and all other persons interested in said estate, are as follows, to wit: Your petitioner, George B. Knaggs, of Maumee, State of Ohio; James W. Knaggs, of Toledo, State of Ohio; both sons of said Whitmore Knaggs, deceased. Also, Alexander, Edward, Catherine, and —— Knaggs, children of Whitmore Knaggs, jr., the son of said deceased, also deceased. Also, the children of John Knaggs, deceased, a son of said testator, viz: John, Worley, Henry, Adeline, Maria, and Sophia Knaggs; all of said grandchildren residing in Toledo aforesaid. Also, the children of Betsy Desnoyers, (formerly Knaggs,) deceased, a daughter of said deceased, to wit: Charles, Frances, and Lewis Desnoyers.

Your petitioner therefore prays that the letters heretofore issued to said James W. Knaggs may be revoked, and that letters of administration with the will annexed of the goods, chattels, and credits of said deceased left unadministered by said James W. Knaggs may be granted to him, and that such other and further order may be had in the premises as may be required by the statutes in such case made and provided.

G. B. KNAGGS.

JUNE 3, 1857.

STATE OF MICHIGAN, *County of Wayne:*

On this 3d day of June, A. D. 1857, personally appeared before me George B. Knaggs, the petitioner named in the foregoing petition, who, being duly sworn by me, did depose and say that he has heard read the foregoing petition, by him subscribed, and knows the contents thereof, and that the same is true, according to the best of his knowledge and belief.

Before me. E. HAWLEY, JR.,
Judge of Probate.

STATE OF MICHIGAN, *County of Wayne,* } *ss:* Probate court for said county.

I, E. Hawley, jr., judge of probate for said county of Wayne, and acting as clerk of said probate court, do hereby certify that I have compared the foregoing copy of the petition of George B. Knaggs as filed in said court, and the jurat thereof, with the original record thereof now remaining in the probate office of said county, and have found the same to be a correct transcript therefrom and of the whole of said original record.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said probate court this fifth day of November, in the year eighteen hundred and fifty-seven, at Detroit.

E. HAWLEY, JR.,
Judge of Probate.

STATE OF MICHIGAN, *County of Wayne, ss:*

I, E. Hawley, jr., judge of probate for said county, and presiding judge of the probate court for said county, do hereby certify that the foregoing exemplification of the petition of George B. Knaggs, and the jurat thereto, is authenticated in due form.

In testimony whereof, I have hereunto set my hand and have hereto [L. S.] affixed the seal of said probate court, at the city of Detroit, this fifth day of November, A. D. eighteen hundred and fifty-seven.

E. HAWLEY, JR.,
Judge of Probate.

STATE OF MICHIGAN, *County of Wayne,* } *ss:*

At a session of the probate court for the county of Wayne, holden at the probate office in the city of Detroit, on Friday, the 13th day of November, eighteen hundred and fifty-seven—present, E. Hawley, jr., judge of probate for said county.

In the matter of the estate of Whitmore Knaggs.

This day having been assigned for hearing the petition of James W. Knaggs, praying that the letters of administration *de bonis non,*

heretofore issued by this court to George B. Knaggs, to wit: on the 27th day of June, A. D. 1857, may be revoked, and he, the said petitioner, be restored to his former office and trust as administrator of said estate: Now comes the said petitioner and the said George B. Knaggs, whereupon the allegations and proofs of the parties are heard, and also the argument of their respective counsel, and the same being fully considered, it is ordered, adjudged, and decreed by this court, by virtue of the authority therein vested, and in pursuance of the statute in such cases made and provided, that the said letters heretofore issued to said George B. Knaggs be, and the same are hereby, revoked, and that the said James W. Knaggs be restored to his former office and trust as administrator of said estate upon his filing new bonds in the sum of fifty thousand dollars, with sufficient sureties as required by law, to be approved by this court, conditional for the faithful performance of the said trust and office.

At a session of the probate court for the county of Wayne, holden at the probate office in the city of Detroit, on Thursday, the 19th day of November, eighteen hundred and fifty-seven—present, E. Hawley, jr., judge of probate.

In the matter of the estate of Whitmore Knaggs, deceased.

Now comes James W. Knaggs, the administrator of said estate, and presents the bond heretofore required of him by this court, and the same being examined, it is approved and ordered recorded.

STATE OF MICHIGAN, } *ss:* In the probate office of said county.
County of Wayne, }

I, Elijah Hawley, jr., judge of probate for said county, and acting as clerk of the probate court, do hereby certify that I have compared the foregoing copy of the order revoking letters of administration *de bonis non*, issued to George B. Knaggs, and reinstating James W. Knaggs in the office of administrator of said estate with the will annexed, and the order approving the bond, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said probate court, at the city of Detroit, this 19th [L. S.] day of November, in the year of our Lord eighteen hundred and fifty-seven.

E. HAWLEY, JR.,
Judge of Probate.

STATE OF MICHIGAN, } ss: Probate court for said county.
County of Wayne, }

I, Elijah Hawley, jr., presiding judge of the probate court aforesaid, do hereby certify that the foregoing exemplification of record is authenticated in due form.

In testimony whereof, I have hereunto set my hand and affixed the seal of said probate court, at the city of Detroit, this 19th day of November, eighteen hundred and fifty-seven. [L. S.]

E. HAWLEY, JR.,
Judge of Probate.

Report of R. B. Lee.

CASE OF WHITMORE KNAGGS.

Whitmore Knaggs claims payment for various articles of merchandise and other property belonging to him, taken out of Fort Detroit after the capitulation on the 16th August, 1812, enumerated in an account No. 1, and amounting in value to	$4,191 06¼
Also, for kitchen and farming utensils, horses, cattle, and other property, described in an account No. 2, and stated to have been taken and destroyed by the Indians on the day aforesaid out of the house of the claimant, the value whereof is estimated at	2,310 00
Also, for numerous other articles of merchandise belonging to the claimant, stated to have been taken by the Indians out of the house of R. Attwater, esq., on the day aforesaid, and which are particularized in an account No. 3, and valued at	1,291 25
Also, for several other articles of merchandise, a horse, fowls, and other property, stated to have been taken on the day aforesaid by the Indians out of the claimant's house, and which are comprised in an account No. 4, and valued at	223 75
Also, for damages done to the dwelling-house of the claimant and for the destruction of furniture therein by the Indians, on and after the said 16th August, 1812, as estimated in an account No. 5, amounting to	602 12
Also, for clothing and other property belonging to Robert Smith, taken from the claimant's house on the day aforesaid by the Indians, the value of which is estimated, in an account No. 6, to be	65 50
Also, for a mare and colt, clothing and other property belonging to Pierre Pole, taken by the Indians on the day aforesaid, part thereof, of the estimated value of $80, from the house of the claimant, and the residue thereof, of the estimated value of $35, from the house	

of Reuben Attwater, esq., as appears in an account No. 7.....	$123 00
Also, for two mares and colt, and two large hogs, killed by the Indians on the 20th August, 1812, and for arms and accoutrements taken by the British. This property is stated, in an account No. 8, to have belonged to Pierre Labidu, and to have been worth.....	158 00
	8,964 68¼

It is alleged the before-mentioned property was taken and destroyed in consequence of the occupation of the claimant's house as barracks by part of the American forces by order of a military officer of the United States, and on account of the claimant's being an agent in the Indian department, in proof of which the following testimony has been presented:

James Witherell states on oath, that at Detroit, in the Territory of Michigan, in the summer of 1812, he commanded four companies of volunteers and detached militia of the said Territory, which were, by order of the Secretary of War, called into the service of the United States; that the claimant was then a captain in the 1st regiment of territorial militia, and, with the company under his command, were, previous to the 16th of August, and on that day, in the United States service by order of the commanding general; that the said company did, before and on the said 16th of August, rendezvous at the house of the claimant, which stands on the margin of the Detroit river, above the Spring Wells at a short distance from where the British army landed on said 16th of August; that he believes the claimant did not abandon that position till the enemy were within pistol shot of it, after which his barn was burnt, and his house, with such of the furniture as was not very portable, was shamefully cut and mangled, some valuable articles totally destroyed; and that if actions are the best index to motives, as there were no other troops stationed in that vicinity nor any other buildings injured, it affords strong presumption that the occupation of the premises as aforesaid produced the outrages committed upon them.

Duncan Reid states on oath, that in the month of August, 1812, he was an ensign in Captain Hubert Lecroix's company of Michigan militia, then in the service of the United States; that he (Ensign R id) being on command at Detroit, was stationed on the 15th of August at the house of the claimant, near Spring Wells, doing duty in the claimant's company, then on duty at that place; that he knows the house of the claimant was then occupied as barracks for military purposes; that, to the best of his knowledge and belief, it was so occupied by the order of General Hull, then commanding at Detroit; that he knows that on the 16th of August the house and premises of the claimant were materially damaged by the enemy immediately preceding and directly after the capitulation of General Hull; that he believes the said outrages and destruction of the property of the claimant were in consequence of his house having been so occupied for mil-

itary purposes, and that he is well acquainted with the claimant, and is knowing generally to the losses and injury sustained by him at the time and in the manner above specified, and that the account exhibited by him, amounting to $8,964 18¾, is just and true, and that the injury set forth by him was actually sustained.

David Cooper states on oath, that previous to and after the declaration of war between Great Britain and the United States, he was enrolled in the claimant's company, in which he served under him until the surrender of Detroit; that at the time of General Hull's army arriving at that place, about the 4th of July, 1812, the claimant's company was, and had previously been, on and off duty—that is, patrolling up and down the settlement at nights from Spring Wells to Detroit, a distance of about three miles; that a short time after the general's arrival, the company was called into actual service of the United States, in which it was kept till the surrender of Detroit; that the claimant's company was actually stationed at his house during the night and morning before the surrender, when it was exposed to the fire of the enemy from one of their vessels lying opposite Sandwich, at the time the enemy's troops were crossing below the Spring Wells; that he believes the claimant's property was destroyed and plundered in consequence of his house being occupied as quarters for the troops, and of his being in the Indian department.

James May, esq., states on oath, that he is personally acquainted with the claimant, and is knowing to his commanding a company of Detroit militia in the month of August, 1812, who were stationed at Spring Wells jointly with a detachment of troops under the command of the late Captain, now Colonel, Snelling, at which station they remained until a short time before the enemy landed; that the claimant's dwelling-house was situated a short distance from the landing place; that shortly after and preceding the capitulation, it was cut up with great severity by the enemy; not a door, sash, or pane of glass, escaped their revenge; the household furniture broke and destroyed; the most valuable movable property plundered and carried off by the enemy, with a large sum of money, gold, silver, and bank notes; the wearing apparel of his numerous family, horses, &c., &c.; and that from the situation of the claimant at that time commanding a company of militia, stationed as aforesaid, and agent to the Indian department, together with his house having been occupied as aforesaid by the troops, it is his (Mr. May's) firm opinion that the claimant's sufferings and losses originated in the above circumstance, inasmuch as he was the only inhabitant in that part of the settlement whose property was destroyed and plundered by the enemy preceding the capitulation.

Dr. William Brown states on oath, that in the year 1812 he was frequently at the dwelling-house of the claimant; that after the declaration of war he has frequently seen the militia in and about the claimant's house under arms, and to the best of his recollection has seen orders directed to the claimant to have his guards patrol from the Spring Wells to Cabour's place—a distance of about a mile and a half; that from information beyond a doubt, the claimant's company was stationed at his house the night and morning that the enemy's

troops crossed previous to the capitulation; and that he has heard the British officers assert that the destruction and damage done to the claimant's property were on account of his house being occupied by troops, and of his being in the Indian department.

Theresa and Elizabeth Descomtes die Labordi state on oath, that the statements contained in the aforesaid accounts, Nos. 1, 2, 3, and 7, are just and true, according to the best of their knowledge; and that all the statements contained in the aforesaid account, No. 4, are just and true, except the horse, about which they know nothing.

Pierre Solo states on oath, that he knows that the horse mentioned in the said account, No. 4, was taken and carried away by the Indians; that the statement contained in the said account, No. 2, is just and true to the best of his knowledge; and that the trunk mentioned in the aforesaid account, No. 6, was found broke in pieces; and that he does not know the quantity and value of the clothes contained in said trunk, but he knows that it was full before it was broken by the Indians.

James Henry and William Brown state that they examined the premises of the claimant on the 9th of September, 1812, and estimated the damages done to his house, as mentioned in the said account, No. 5, at $602 12.

Robert Smith and Pierre Solo state on oath, that the statement contained in the aforesaid account, No. 8, is just and true to the best of their knowledge.

Jacques Demari, Pierre Solo, and Jean Baptiste Campeau state on oath, that they were present when the Indians pillaged and carried away the property described in the said account, No. 2, from the dwelling-house of the claimant, which property they put in boats and canoes, and crossed it over the river to the British shore; and that the pillage lasted three or four days.

Summary of facts.

It appears that claimant, in consequence of his house being occupied previous to and at the time the enemy attacked Detroit, in the year 1812, as barracks, and his farm as a military station, and his being an Indian agent, after the capitulation of General Hull on the 16th of Au ust of that year, sustained from said enemy, in injury to his buildings and in the plunder of various articles of personal property, specifically set forth in the evidence, a damage amounting to $8,964 68¼.

Though the occupation of his dwelling-house and farm for the purposes aforesaid is fully proved, yet inasmuch as partial or consequential injury, according to the instruction of the President of the United States, of the 21st of October, 1816, is not provided for by the law of the 9th of April, 1816, to entitle the claimant to payment in consequence of the occupation of his buildings as barracks or military depots by the United States, on account of their destruction by the enemy, the destruction must be total, which is not alleged in this case.

This is a claim, therefore, which must depend entirely on the equity and beneficence of the legislature for its allowance.

All which is respectfully submitted,

RICHARD BLAND LEE, *C. C., &c.*

OFFICE OF CLAIMS, &c.,
Washington, February 17, 1818.

Commission.

Be it known, pursuant to two laws of the United States, the one entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," passed on the 9th day of April, in the year 1816, and the other entitled "An act to amend the act authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," passed on the 3d day of March, 1817, that I, Richard Bland Lee, duly appointed by the President of the United States, by and with the advice and consent of the Senate, commissioner, under the first recited act, reposing special confidence in your honesty, ability, and diligence, have constituted and appointed, and by these presents do constitute and appoint you, Henry J. Hunt, Thomas Rowland, and Richard Smyth, gentlemen, commissioners (any one or more of you to act) to take the testimony of such witnesses as may be brought before you or any of you, either by your own summons or otherwise, on oath or affirmation in due form being administered by either of you relative to certain claims of Isabella Macomb, Whitmore Knaggs, and James May against the United States; a particular description of which is contained in the annexed schedule, conforming yourselves in all respects to the rules and directions hereto attached. And all testimony so taken by you, you shall certify under your hands or hand, (as the case may be;) and having duly executed the duties required by this commission, you shall return the same, under a sealed cover, by mail, with a report of all your proceedings thereon, to this office, on or before the first day of December next.

Before you proceed to act you will take an oath, before some officer authorized by law to administer the same, "that you will faithfully and impartially execute the duties assigned to you by this commission," a certificate of which, from the officer administering the same, you will transmit with the report of your proceedings.

In testimony of the premises, I, the said Richard Bland Lee, hath to these presents, at my office in the city of Washington, affixed my signature this seventh day of May, in the year 1817.

RICHARD BLAND LEE.

Rules and directions to the commissioners.

1. You will summon before you and examine the following witnesses on the part of the United States, viz: ——— ———, and such other persons as you may believe can testify as to the subject claimed, favorably to the interests of the United States, generally as to their knowledge of the matter in controversy, and as to the character of the witnesses produced by the claimant, if you shall deem this precaution necessary.

2. You shall examine the witnesses produced by the claimant, but no testimony must be taken but in conformity to the rules prescribed by the notice from this office of the 3d of June, 1816, referring for your direction to the class of cases to which the particular claim before you belongs; a copy of which notice is therefore herewith enclosed.

3. Every witness examined must, in the first place, swear or affirm that he has no interest, directly or indirectly, in the claim.

4. In your report, if you have doubts concerning the credibility of the witnesses, derived from their general character or other circumstances, you must state the grounds of such doubts.

MICHIGAN TERRITORY, *County of Wayne, ss:*

I, John McDonell, associate judge of the county of Wayne and Territory of Michigan, certify that I administered the oath prescribed in the annexed commission to Henry J. Hunt, Thomas Rowland, and Richard Smyth, esquires, commissioners therein named.

In testimony whereof, I have hereunto set my hand and seal the tenth day of October, A. D. 1817.

[L. S.] J. McDONELL.

Schedule.

The within named claimants demand payment for various injuries sustained by them in consequence of the military taking and occupation of their property under the authority of the United States, without specifying the particulars, each claim exceeding two hundred dollars. The commissioners will be able to class the claims according to the proofs which may be produced, and thereby will discover the kind of proof which is necessary in each.

R. B. LEE.

Reports in the cases of Mrs. Isabella Macomb, Whitmore Knaggs, and James May.

The undersigned commissioners, appointed upon the 7th day of May, 1817, by you for the purpose of investigating certain claims against the United States, exhibited by Mrs. Isabella Macomb, Whitmore Knaggs, and James May, met upon the 10th day of October, and were duly qualified to act as such, by the certificate of his honor

Judge McDonell, herewith transmitted. From that period until the present those individuals have brought before us the testimony herein enclosed, all in the form of affidavits where they are by citizens, and certificates when by officers of the army. We view Mrs. Isabella Macomb's claim for the damages done by the troops of the United States upon Hog island as coming completely under the first class of cases issued from your office 3d June, 1816, and under his excellency Governor Cass's certificate attached thereto, dated on the 27th September, with his subsequent affidavit of the 26th March, complying perfectly with the requisites of the law, and that she consequently is entitled to receive the payment thereof.

We consider that part of Captain Knaggs's claim for the destruction of his out-houses and barn, and damage done to his dwelling-house and property taken therefrom, as coming correctly under the sixth class of cases of claims of property, issued from your office 26th March, 1817, and that he is entitled to the payment therefor.

The other cases we do not consider as coming under any of the classes of cases which you forwarded to us. But, considering the very great extent to which those individuals have suffered, and their claims for remuneration from the government therefor, I consented to receive the evidence which they were capable of producing, which is all herewith forwarded in the form of affidavits by individuals of excellent characters. All the witnesses are perfectly reliable. The claimants have made oath before us that the within is all the testimony they are able to procure. And that, therefore, on account of the said demands from the United States, on any officer thereof, we regret that unavoidable circumstances rendered it out of our power to transmit the papers before this time.

HENRY J. HUNT,
THOMAS ROWLAND,
Commissioners.

RICHARD B. LEE, Esq., *&c., &c., &c., Washington City.*

Deposition of James May.

TERRITORY OF MICHIGAN, *District of Detroit, Wayne County, to wit:*

Personally appeared before the subscriber, one of the judges of the county court of common pleas, and one of the commissioners duly authorized by Richard B. Lee, esquire, to inquire into the claims of Isabella Macomb, James May, and Whitmore Knaggs on the United States of America, viz:

James May, esquire, of Detroit, who made oath, according to law, deposeth and saith: He has resided at Detroit since the year 1778; is personally acquainted with Whitmore Knaggs, the present claimant; and is also knowing to his commanding a company of Detroit militia, in the month of August, 1812, who were stationed at Spring Wells, jointly with a detachment of troops, under the command of the late Captain, now Colonel, Snelling, at which station they remained until a short time before the enemy landed. Captain Knaggs's dwelling-

house was situated a short distance from the landing place; shortly after, and preceding the capitulation, it was cut up with great severity by the enemy—not a door, sash, or pane of glass escaped their revenge, together with the household furniture, &c., broke and destroyed, to the exception of such part of the most valuable movable property, was plundered and carried off by the enemy, together with a large sum of money, gold, silver, and bank notes, the wearing apparel of his numerous family, horses, &c., &c.

This deponent further deposeth, from the situation of Captain Knaggs, at that time commanding a company of militia, stationed as aforesaid, and agent to the Indian department, together with his house having been occupied by the troops under Captain Snelling and his own militia company, it is his firm opinion that Captain Knaggs's sufferings and losses originated from the above circumstance, inasmuch as he was the only inhabitant in that part of the settlement whose property was destroyed and plundered by the enemy preceding the capitulation.

This deponent further testifies that, after the capitulation, the savages were determined to destroy Captain Knaggs, who was compelled to take shelter in the house of this deponent until he could find a safe opportunity of retiring to the United States, which he effected in a few weeks.

This deponent further testifies, after Captain Knaggs's departure, the savages were seeking to destroy his children, (five in number,) who, together with their mother, secreted themselves for several months in this deponent's house, and amongst their friends.

JAMES MAY.

Sworn to and subscribed before me at Detroit, in the Territory and county aforesaid, this fifth day of December, A. D. 1817.

H. J. HUNT,
A. J. C. C. C. Wayne.

Deposition of P. W. Knaggs.

TERRITORY OF MICHIGAN, *County of Wayne, to wit:*

Personally appeared before me, the undersigned, a justice of the peace, Peter Whitman Knaggs, of the county aforesaid, who, being duly sworn, deposeth and saith: That this deponent was born in the county aforesaid; has always resided therein, except at such times as hereinafter mentioned, and is now thirty-four years of age and upwards; that this deponent resided at his father's (the late Whitmore Knaggs, deceased,) house in the month of August, in the year 1812; that during the summer of 1812 the militia, under my father's command, were often stationed at and near my father's house, and also the troops in the regular service; that previous to the 16th of August, (and how long this deponent does not now recollect,) by order of the commanding officer, General Hull, my father with his company were stationed at my father's house, on the Detroit river, near where the

enemy landed; that during the night of the 15th, and until in the morning of the 16th, they remained at this station, and, before daylight on said 16th, I well remember that my father received orders from the commanding officer at Detroit to march to Detroit with his company, which orders were conveyed to him by Abraham F. Hull, son of General Hull; that as soon as my father's house was left by his company and a detachment, I think, under the command of Captain Snelling, the Indians began to plunder the house of its contents. And this deponent further saith and deposeth that every article of clothing and household furniture of every kind was destroyed; that trunks were broken and destroyed; the windows and doors demolished; that the cattle of every description on my father's farm and about his house were wantonly killed; and that my father's deponent's father and his father's family; and this deponent further house and farm, that were well furnished, were rendered useless to this saith that his father was sought for by the Indians after the capitulation of Detroit, who were determined to destroy him, and that this deponent's father and this deponent only escaped the vengeance of the sa- ages by secreting themselves amongst their friends; that they were advised and assisted by their friends to depart from the ci y of Detroit in great secrecy; that this deponent went with his father and with him landed at Erie, in Pennsylvania, and thence went to Washington; that from Washington this deponent's father and this deponent, in the winter of 1813, went to Sandusky, in Ohio, and from Sandusky, at the request of General Harrison, this deponent's father and this deponent joined General Winchester at Fort Meigs, and that they were taken at the battle of the Raisin, in the month of ——, 1813; that on the day of said battle this deponent and his father were separated, and this deponent's father was taken to Malden, and thence to Montreal; that this deponent and his father were saved at the battle aforesaid by the interference of two Indians; that this deponent was taken to Detroit, where he was concealed for some months in the Rev. Gabriel Richards's house; and that during the occupancy of this place (the city of Detroit) by the British this deponent and the rest of this deponent's father's family were imminently in danger of losing their lives; that the Indians constantly sought to destroy them; and this deponent further says that his father returned about one year after the battle aforesaid to his family at Detroit, where they were residing with their friends in a destitute situation; and this deponent further says that in consequence of the total loss of all the property above-mentioned, and of a large sum of money, this deponent's father and his family have been in embarrassed circumstances ever since; and this deponent further says that during the time that General Harrison remained at this place (the city of Detroit) this deponent's father's family received rations from the United States commissary, according to the orders of General Harrison.

PETER W. KNAGGS.

Sworn to and subscribed before me this 4th day of January, A. D. 1830.

B. J. H. WETHERELL, *J. P. W. C. M. T.*

Deposition of D. Cooper.

TERRITORY OF MICHIGAN, *District of Detroit, to wit:*

Personally appeared before me, the undersigned, a justice of the peace in and for the district aforesaid, David Cooper, of said district, who, being duly sworn, deposeth and saith: That previous to and after the declaration of war between Great Britain and the United States of America, I was enrolled in Captain Whitmore Knaggs's company of militia, in which I served under him until the surrender of Detroit; that after the arrival of Brigadier General Hull's army in this place, which was on or about the 4th day of July, 1812, his company had then and previously been on and off of duty; that is, patrolling up and down the settlement at night from Spring Wells to Detroit, a distance of about three miles. A short time after General Hull's arrival the company was called into active service of the United States, in which service the company was kept until the surrender of Detroit.

I do further depose and say that Captain Whitmore Knaggs's company was actually stationed at his house during the night and morning before the surrender, where we were exposed to the fire of the enemy from one of their vessels lying opposite Sandwich at the time the enemy's troops were crossing below the Spring Wells. Your deponent verily believes that Captain Knaggs's property was destroyed and plundered in consequence of his house being occupied as quarters for the troops, and of his being in the Indian department; and further your deponent saith not.

D. COOPER.

Sworn to and subscribed before me this 11th December, 1817.

PETER AUDRAIN,
Justice of the Peace.

Deposition of D. Reid.

TERRITORY OF MICHIGAN, *District of Detroit, to wit:*

Personally appeared before me, the undersigned justice of the peace in and for said district, Duncan Reid, of the city of Detroit, who, being duly sworn, deposeth and saith: That in the month of August, 1812, the deponent was an ensign in Captain Hutene Lecroix's company of Michigan militia, then in the service of the United States. Deponent being on command at Detroit, was stationed on the fifteenth of August at the house of Captain Whitmore Knaggs, near Spring Wells, doing duty in his the said Captain Knaggs's company of militia, then on duty at that place; and deponent knows that the house of Captain Knaggs was then occupied as a barracks for military purposes; to the best of deponent's knowledge and belief the said house was so occupied by the order of General Hull, then commanding at Detroit.

Deponent further knows that on the sixteenth of August the house and premises of the said Whitmore Knaggs was materially damaged by the enemy immediately preceding and directly after the capitulation of General Hull; and deponent verily believes that said outrages and destruction of the property of Captain Knaggs was in consequence of his house having been so occupied for military purposes.

Deponent further states that he is well acquainted with Captain Knaggs, and is knowing generally to the losses and injury sustained by him at the time and in the manner above specified; and deponent believes that the account exhibited by the said Captain Knaggs, amounting to $8,964 18¾ cents, is just and true, and that the injury set forth by him was actually sustained.

DUNCAN REID.

Sworn and subscribed before me this 14th November, 1817.

THOMAS ROWLAND,
Justice of the Pease.

Deposition of William Brown,

TERRITORY OF MICHIGAN, *District of Detroit, to wit:*

Personally appeared before me, the undersigned justice of the peace in and for the district aforesaid, Doctor William Brown, of said district, who, being duly sworn, deposeth and saith: That, in the year one thousand eight hundred and twelve, I was frequently at the dwelling house of Captain Whitmore Knaggs, and that after the declaration of war I have frequently seen the militia of his company in and about his house under arms, and that to the best of my recollection I have seen orders directed to him to have his guards patrol from the Spring Wells to Cabour's place, a distance of about one mile and a half; from information beyond a doubt, his company were stationed at his house the night and morning that the enemy's troops crossed previous to the capitulation; I have also heard the British militia officers assert that the destruction and damage done to Captain Knaggs's property was on account of his house being occupied by troops, of his being in the Indian department; and further this deponent saith not.

WILLIAM BROWN.

Sworn to and subscribed before me this 3d December, 1817.

THOMAS ROWLAND,
Justice of the Peace.

DETROIT, *December* 3, 1817.

Depositions of T. Miller and W. Brown.

MICHIGAN TERRITORY, *County of Wayne:*

Theophilus Mettez, of the county aforesaid, on oath, states: That he was orderly sergeant in a company of militia, commanded by Cap-

tain Whitmore Knaggs, in the late war, on the 16th August, 1812, at the time Michigan was surrendered to the enemy; that on the evening preceding the capitulation Captain Knaggs's company was stationed in the house of Captain Knaggs, near Spring Wells, by order of General Hull's aide-de-camp, Captain Abraham F. Hull, who continued with the company in person a great part of the evening of the 15th August, 1812; and that said company continued in the said house until shortly before the capitulation, when they were ordered to come up to Detroit; the enemy immediately took possession of the premises, as soon as the company left the same, and immediately commenced destroying the property, as this deponent was informed, and which he afterwards discovered to be the case on the same day after the surrender.

THEOPHILUS METTEZ.

Sworn to and subscribed before me at the city of Detroit, this 28th March, A. D. 1830.

JOHN McDOWELL, *Justice of the Peace.*

MICHIGAN TERRITORY, *County of Wayne:*

Doctor William Brown, of the county aforesaid, being duly sworn, deposeth and saith: That the annexed memorandum of damages caused to the property of the late Whitmore Knaggs by the enemy, in August, 1812, and signed by the late James Henry, esq., and this deponent, amounting to $602 12, and dated on the 9th September, 1812, as aforesaid, was estimated by the said James Henry and this deponent about the time of the date of said memorandum, at the actual value which they considered the property so destroyed was worth in money. The deponent understood and heard it said by persons in the service of the enemy that Captain Knaggs's property was destroyed in consequence of the same being occupied by the military force of the United States.

That deponent further, to his own knowledge, saw the house of Captain Knaggs occupied as a rendezvous by the militia of his company under arms.

WILLIAM BROWN.

Sworn to and subscribed before me this 28th March, A. D. 1830.

JOHN McDOWELL, *Justice of the Peace.*

MICHIGAN TERRITORY, *ss:*

To all to whom these presents may come, this may certify that Jo h McDowell, whose official signature is affixed to the within deposition of Theophilus Mettez and William Brown, was on the first day of March, in the year of Lord one thousand eight hundred and twenty-nine, and ever since has been and now is a justice of the peace within and for the county of Wayne, in the Territory of Michigan, to all whose official acts and attestations as such full faith and credit are d ıə ought to be given.

In witness of which I have hereto set my hand and affixed the great seal of said Territory this thirtieth day of March, in the year of our Lord one thousand eight hundred and thirty.

[L. S]

J. WITHERELL,
Secretary of Michigan.

Memorandum of property taken out of Fort Detroit after the capitulation, on the 16th day of August, 1812, belonging to Whitmore Knaggs, viz:

1 piece fine linen, 25 yards, at $1 50	$37 50
1 piece coarse linen, 25 yards, at 75 cents	18 75
½ piece coarse linen, 12½ yards, at 87½ cents	10 93¾
5 pieces cotton shirting, 25 yards each, 125 yards, at 87½ cents	109 37½
176 yards calico, at 62½ cents	110 00
14 yards black silk, at $1 75	24 50
3 silk gowns	48 00
3 large silk shawls, at $10	30 00
3 pair morocco shoes, at $3	9 00
8 yards purple velvet	12 00
1 yard black velvet	1 50
6 yards velvet binding	3 00
1 sprig muslin gown	10 00
2 pair beaver gloves	2 00
1 beaver shawl	15 00
1 large laced muslin shawl	6 00
3 pair ladies' silk hose	9 00
1 dozen printed shawls	10 50
4 dimity petticoats	14 00
8 yards bombazine	8 00
3 pair cotton hose	6 00
2 cassimere riding habits	50 00
6 pieces of ribbon of different kinds	18 00
1 yard broad cotton lace	2 00
1 pair kid slippers	2 00
2 large dining table cloths, at $15	30 00
2 pair gold ear-rings	20 00
3 gold rings	12 00
2 gold necklaces, at $10	20 00
1 gold watch-chain	20 00
2 ladies' crooked horn combs, inlaid with gold, at $5	10 00
1 ladies' crooked horn comb	2 50
5 window curtains	10 00
½ piece sprig muslin	24 00
3 dozen cotton handkerchiefs	36 00
½ dozen blue silk handkerchiefs	5 25
1½ pound sewing silk	6 00
2 superfine cloth coats	60 00
6 yards superfine blue cloth	60 00

3 yards superfine brown cloth - - -	$30 00
2 pair pantaloons, cassimere - - -	20 00
4 yards fearnaught - - - - -	12 00
3 yards second scarlet cloth - - -	15 00
¾ yard superfine green cloth - - -	7 50
1 gauze gown - - - - -	6 00
1 gold breastpin - - - - -	5 00
1 pair silver knee-buckles, set in with diamonds -	4 00
1 pair silver knee-buckles - - - -	2 00
1 pair silver boot-buckles - - - -	1 50
2 yards pink silk - - - - -	3 50
2 yards linen cambric - - - -	7 00
1 black satin cloak, edged with lace - -	30 00
2,260 dollars in silver - - - - -	2,260 00
108 dollars in gold - - - - -	108 00
800 dollars in bank notes - - - -	800 00
2 account books - - - - -	
5 testaments - - - - -	3 75
	4,191 06¼

DISTRICT OF DETROIT, *to wit:*

Personally appeared before me, the subscriber, one of the justices of the peace in the district aforesaid, Theresa and Elizabeth Descomtes die Labadi, who both made oath on the Holy Evangelists of Almighty God that the foregoing statement is true and just, to the best of their knowledge.

In testimony whereof I have hereto subscribed my name, at Detroit, the 15th September, 1812.

PETER AUDRAIN, *J. P. D. D.*

Memorandum of property taken and destroyed by the following Indians: Chippewas, Pottawatomies, Ottawas, and Delawares, on the 16th of August, 1812, *belonging to Whitmore Knaggs, viz:*

Sundries taken out of the house of R. Atwater, esq., after the capitulation, viz:

1 silver coffee pot - - - - -	$60 00
1 silver sugar dish - - - - -	20 00
1 pair sugar tongs - - - - -	2 00
12 silver tablespoons, at $2 50 - - - -	30 00
12 silver teaspoons - - - - -	12 00
1 silver soupspoon - - - - -	12 00
2 silver tumblers, gilded inside, $7 50 - - -	15 00
1 silver candlestick with three branches - -	20 00
2 large silver candlesticks - - - -	17 00
4 small plated candlesticks - - - -	8 00
1 pair steel snuffers - - - - -	2 25

1 plated snuffer stand	$3 00
2 women's great-coats, $20 each	40 00
1½ dozen linen shifts	44 00
1 lace veil	4 00
4 muslin gowns, $18 each	72 00
4 calico gowns, $9 each	36 00
1 child's frock (muslin)	3 00
1 child's bed quilt (calico)	2 00
1 child's dimity petticoat	2 00
2 large white bed quilts, $25 each	50 00
2 large calico bed quilts, (lined,) $8 each	16 00
4 large calico bed quilts, $6 each	24 00
2 child's cotton sheets, $1 50 each	3 00
1 feather bed, weight $50 pounds, with tick	39 00
1 large rose blanket	8 00
6 muslin caps edged with lace, $1 37½ each	8 25
4 muslin tippets edged with lace, $3 each	12 00
4 Russia-sheeting sheets, $6 each	24 00
8 diaper towels, 75 cents each	6 00
4 bandana handkerchiefs, $1 25 each	5 00
2 linen handkerchiefs, $1 each	2 00
7 pillow cases, 75 cents each	5 25
1 set bed curtains edged with fringe	40 00
1 set bed curtains	20 00
1 feather bolster	6 00
1 marten muff and tippet	25 00
2 bed quilts not made, $5 each	10 00
5 pounds sewing thread, $4 per pound	20 00
2 pounds cotton thread, $2 per pound	4 00
6 cotton shirts, $3 50 each	21 00
6 linen shirts, $3 each	18 00
12 muslin neckcloths, $1 50 each	18 00
2 summer coats of calico, $4 each	8 00
1 pair superfine black cassimere pantaloons	12 00
2 pair superfine cloth pantaloons, $12	24 00
1 pair black buckskin pantaloons	7 50
1 man's great-coat, double milled cloth	35 00
1 boy's great-coat (coating)	11 25
8 yards gray coating, $2 50 per yard	20 00
5 black buckskins, $3 each	15 00
3 yards coarse blue cloth, $4 per yard	12 00
1 brown cloth capote	15 00
2 calico shirts	5 00
9 children's shirts, $3 each	27 00
6 children's under-vests, $2 each	12 00
4 children's dimity under-vests, $1 50 each	6 00
1 woolen vest	3 00
3 children's suits of cloth, complete, $10 each	30 00
2 children's great-coats, of coating, $5 each	10 00
1 pair old shoes	4 00
1 dozen pair first rate garnish moccasins	36 00

2 large carpets, $60 each	$120 00
150 pounds maple sugar	14 00
2 Marseilles quilling vests, $4 each	8 00
3 yards green flannel, $1 per yard	3 00
5 yards yellow flannel, at 75 cents	3 75
2 flannel petticoats	6 75
11 pair woolen socks, at 75 cents	8 25
1 pair men's silk hose	4 00
1 pair men's gallowses	75
3 worsted belts, $5 each	15 00
2 pounds all-colored worsted	4 00
1 double dozen China cups and saucers	10 00
1 large stone pitcher	7 00
2 pair women's silk gloves, $1 50 per pair	3 00
1 pair yellow beaver gloves	2 25
2 small dining-table cloths, $2 each	1 00
1 small dining-table cloth	5 00
	1,291 25

DISTRICT OF DETROIT, *to wit:*

Personally appeared before me, the subscriber, one of the justices of the peace in the district aforesaid, Therese and Elizabeth Descomtes die Labadi, who both made oath on the Holy Evangelists of Almighty God that the foregoing statement is true and just to the best of their knowledge.

In testimony whereof I have hereto subscribed my name, at Detroit, the 15th September, 1812.

PETER AUDRAIN, *J. P. D. D.*

Memmorandum of sundry property belonging to Whitmore Knaggs, taken on the 16th of August, 1812, by the Ottawas, Chippewas, Pottawatomies, and Wyandott Indians, at said Knaggs's house.

10 gallons of cherry bounce, at 12*s*	$15 00
2 pairs sheep shears, at 6*s*	1 50
1 pair of spurs, at 16*s*	2 00
1 plated martingale	12 00
2 portmanteaus	20 00
2 pairs of saddle bags	12 00
2 rifle locks	4 00
2 epaulets, taken at the fort	20 00
1 black and red plume, at 12*s*	1 50
2 pairs of small scissors	1 50
3,000 needles	15 00
24 papers of pins	6 00
Sundry silver works	15 00
Window cords and tassels	2 50

3 hones	$4 50
2 yards of striped cotton	2 50
1 brown horse, taken on the 6th of September	40 00
	175 00
25 pounds goose shot, at 25 cents	6 25
10 pounds duck shot, at 25 cents	2 50
15 pounds gunpowder, at $1	15 00
1 harness, brass mounting	15 00
1 gilt watch, taken at my house	10 00
	223 75

TERRITORY OF MICHIGAN, *District of Detroit:*

Personally appeared before me the undersigned, one of the justices of the peace in the district of Detroit, Therese Labadi and Elizabeth Labadi, and both made oath on the Holy Evangelists of Almighty God that they know all the above statement to be just and true, except the article of the horse stated at forty dollars, about which they know nothing.

In testimony whereof I have hereto subscribed my name, at Detroit, the 18th September, 1812.

PETER AUDRAIN,
J. P. D. D.

Also appeared before me Pierre Solo, who made oath on the Holy Evangelists of Almighty God that he knows of the horse mentioned in the foregoing statement, valued forty dollars, was taken and carried away by the Indians.

In testimony whereof I have hereto subscribed my name, at Detroit, the 18th September, 1812.

PETER AUDRAIN,
J. P. D. D.

Memorandum of property taken by the following Indians: Pottawatomies, Delawares, Ottawas, and Chippewas, taken at the house of Mr. Whitman Knaggs, on the 16th August, 1812, belonging to Pierre Solo, of Detroit, viz:

2 striped cotton shirts	$6 25
1 pair cloth pantaloons	7 50
1 pair buckskin pants	5 00
1 pair 3-point blankets	8 00
1 buffalo robe	6 00
1 mare and colt	40 00
1 leather hunting shirt	3 75
1 flannel shirt	2 50
1 leather capote	9 00
	88 00

Ditto taken at Reuben Attwater's house:

1 cloth capote	$25 00
1 black silk vest	6 00
1 black silk handkerchief	2 00
1 pair blue Nankeen pantaloons	2 00
	123 00

DISTRICT OF DETROIT, *ss:*

Personally appeared before me the subscriber, one of justices of the peace in the district of Detroit, Therese Descomtes Labadi and Elizabeth Descomtes Labadi, and both made oath on the Holy Evangelists of Almighty God that the within statement is true and just to the best of their knowledge.

In testimony whereof I have hereto subscribed my name the 15th day of September, 1812.

PETER AUDRAIN,
J. P. D. D.

Memorandum of property taken and destroyed by the following Indians: Chippewas, Pottawatomies, Ottawas, out of my house, on the 16th day of August, 1812, belonging to Whitmore Knaggs, viz:

1 large feather bed	$20 00
1 large wool mattress	20 00
8 five-point blankets, at $4 each	32 00
9 calico window curtains, at $2 each	18 00
1 feather bolster	5 00
1 bearskin muff and tippet	2 00
4 pair boots, at $5 per pair	20 00
3 woollen vests, at $4 each	12 00
5 smoked buckskins, at $2 50 each	12 50
11 common chairs, at 50 cents each	5 50
1 cherry cradle	8 00
1 large iron tinned teakettle	7 50
2 frying pans	3 50
1 large round gridiron	5 00
1 small pair steel dog-irons	3 00
3 smoothing-irons	4 50
1 smoothing-iron stand	1 00
8 large milk pans, at $1 50 each	12 00
9 wooden milk bowls	7 00
5 iron pots	30 00
3 Dutch ovens, at $4 each	12 00
5 large brass kettles	50 00
7 small brass kettles	35 00
2 tin kettles	2 50
2 milk pails	2 00

3	iron-bound water-buckets	$9 00
8	felling wood-axes	20 00
250	pounds bar iron	46 87½
26	pounds steel	9 75
3	buffalo robes	22 50
40	Indian mats	40 00
1	large chest carpenter's tools	75 00
½	barrel hog's lard	18 75
6	fowling guns	30 00
1½	barrel salt	12 00
1	hundred weight flour	3 00
20	bushels corn	20 00
1	box containing a variety of chains and traces	15 00
4	sets plated harness, complete	120 00
1	riding chair with cover	260 00
4	working harness complete	40 00
4	breast collars	10 00
3	plated snaffle bridles	18 00
5	plated curb bridles	32 00
3	best (plated stirrups) saddles	51 00
1	sportsman's saddle	17 00
5	halters	7 50
2	horse chains and collars	4 00
4	pair leather lines	10 00
2	marten caps	22 00
1	silver inkstand	9 00
3	double dozen knives and forks	18 00
1	dozen ivory knives and forks (double dozen)	10 00
1	pair large dog irons with brass tops	25 00
1	fire shovel and tongs	5 00
2½	dozen edge plates	5 00
4	edge dishes	12 00
2	China dishes	6 00
1	large soup tureen	3 00
3	pudding dishes, at $1 each	3 00
1	single dozen cups and saucers	1 50
2	sugar dishes, at $1 25 each	2 50
1	japanned teapot	5 50
3	pitchers, at 12*s*., 16*s*., 34*s*.	6 50
4	large bowls, at $1 25 each	5 00
4	double flint quart decanters, at $2 50 each	10 00
1	double flint pint decanter	1 50
7	single flint quart decanters, at $1 50 each	10 50
6	double flint tumblers, at 50 cents each	3 00
1	dozen double flint wine glasses	3 00
6	earthen jars, large	4 50
½	box window glass	12 00
1	dozen common bottles	3 00
20	gallons whiskey, at $1 per gallon	20 00
3	cod lines	4 50
1	pair plated spurs	3 00

1	coffee mill	$3 00
1	pepper mill	2 00
3	grubbing hoes	9 00
2	shovels	4 00
2	spades	4 00
5	scythes and handles	15 00
5	sickles	3 75
332	dollars in bank notes	332 00
2	ploughs complete, at $10 each	20 00
20	head of horses	930 00
10	head of horned cattle	150 00
2	fat hogs	24 00
5	worsted surcingles	7 50
8	hogs	24 00
20	pounds plug tobacco	7 50
7	turkeys	5 25
1	dozen fowls	3 00
6	bags	4 50
1	dozen pewter candle moulds	8 12½
2	dozen tin candle moulds	6 00
½	dozen tart pans	1 00
3	copper teapots, say kettles	15 00
½	gallon tin measure	1 50
¼	gallon tin measure	75
1	tin funnel	50
2	Russia sheeting tents	30 00
4	carving knives and forks	6 00
3	pounds wampum	15 00
1	box razors	2 00
1	shaving box	75
1	tea canister	1 50
1	barrel vinegar	5 00
5	empty barrels	5 00
5	padlocks	5 00
1	whip saw	10 00
1	cross-cut saw	5 00
1	iron-toothed harrow	10 00
2	brass candlesticks	7 00
6	blind bridles	15 00
1	silver breastplate for a sword	7 50
1	violin	15 00
1	flute	3 00
1	cotton umbrella	2 00
4	hoes	4 00
10	pictures with gilt frames, large	40 00
2	currycombs	1 50
1	ox-chain	6 00
100	pounds wool, at 37½ cents per pound	37 50
100	pounds soap, at 25 cents per pound	25 00

20 pounds beeswax, at 25 cents per pound - -	$5 00
1 ram, three-fourths Merino - - - -	5 00
1 dozen Windsor chairs - - - -	24 00
	2,310 00

DISTRICT OF DETROIT, *to wit:*

Personally appeared before me, the subscriber, one of the justices of the peace in the district aforesaid, Therese and Elizabeth Descomtes die Labadi, who both made oath on the Holy Evangelists of Almighty God that the foregoing statement is true and just, to the best of their knowledge. In testimony whereof I have hereunto subscribed my name, at Detroit, the 15th of September, 1812.

PETER AUDRAIN,
Justice of the Peace, Detroit District.

Also, appeared before me, the subscriber, Pierre Solo who made oath on the Holy Evangelists of Almighty God that the foregoing statement is true and just, to the best of his knowledge. In testimony whereof I have hereto subscribed my name, at Detroit, the 15th of September, 1812.

PETER AUDRAIN,
Justice of the Peace, Detroit District.

Also, appeared before me, the subscriber, Jacques Demars, Pierre Solo, and Jean Batiste Campeau, who both made oath on the Holy Evangelists of Almighty God that they were present when the Indians above mentioned pillaged and carried away the property above described from the dwelling house of Mrs. Knaggs, which property they put in boats and canoes and crossed it over the river to the British shore; that the pillage lasted three or four days. In testimony whereof I have hereunto subscribed my name, at Detroit, the 15th of September, 1812.

PETER AUDRAIN,
Justice of the Peace, Detroit District.

Memorandum of horses and hogs that were killed by the Indians on the 20th day of August, 1812, belonging to Mr. Pierre Labadi, of Detroit, viz:

2 mares and 1 colt	$110	
2 large hogs, $7 50 each	15	
		$125
Taken by the British:		
1 fowling gun	15	
1 broadsword	15	
1 powder-horn, with powder and ball	3	
		33
		158

TERRITORY OF MICHIGAN, *District of Detroit:*

Personally appeared before me, the subscriber, one of the justices of the peace for the district of Detroit, Robert Smith and Pierre Solo, and both made oath on the Holy Evangelists of Almighty God that the above statement is just and true to the best of their knowledge. In testimony whereof I have hereto subscribed my name, at Detroit, the 18th of September, 1812.

PETER AUDRAIN, *J. P. D. D.*

Memorandum of articles of clothing and cash taken by the Chippewas, Pottawatomies, and Ottawas, &c., on the 16th of August, from the house of Mr. Whitmore Knaggs, the following belonging to Mr. Robert Smith:

Cash	$36 00
3 waistcoats, $3 each	9 00
2 pairs pantaloons, $2 50 each	5 00
1 shirt	2 00
1 set of razors	2 50
1 pair of shoes	1 50
2 tin cups	50
1 white handkerchief	1 00
1 hat	1 50
3 pairs of socks (or half-stockings)	1 50
1 trunk, broke out of service	5 00
	65 50

DISTRICT OF DETROIT, *ss:*

Personally appeared before me, the subscriber, one of the justices of the peace in the district of Detroit and Territory of Michigan, Pierre Solo, who made oath on the Holy Evangelists of Almighty God that the trunk mentioned in the within statement was found broken in pieces; the deponent doth not know the quantity and value of the clothes contained in said trunk, but he knows that the trunk was full before it was broken by the Indians. In testimony whereof I have hereto subscribed my name, at Detroit, the 17th day of September, 1812.

PETER AUDRAIN, *J. P. D. D.*

DETROIT, *September* 9, 1812.

The following is a memorandum of the property of Whitmore Knaggs, esq., which was destroyed on and after the 16th day of August, 1812, by the following nations of Indians, viz: Ottawas, Chippewas, Pottawatomies, Wyandotts, and Delawares:

1 sideboard	$110 00
1 mahogany table	20 00

1 cherry table	$7 50
1 round table	12 50
1 walnut table	5 00
1 cherry table	5 00
1 mahogany bureau	28 00
1 cherry bureau	20 00
1 cherry desk	30 00
2 arm chairs, $5 and $3	8 00
1 sacking bottom of a bedette	4 00
1 tin roaster	5 00
1 corner cupboard—sixteen panes of glass broken	4 00
In the first room—5 windows, 24 lights each, and one panel door destroyed	22 68
Front and back doors in the hall, and lights over each door	32 00
Second room—3 windows, 24 lights each, and 3 panel doors	31 76
Third room—1 window, 20 lights, and 1 door	18 40
Fourth room—4 windows, 20 lights each	19 60
Fifth room—1 window and front door	18 40
Plaster broken	4 00
Sixth room—2 windows, of 20 lights each, and 2 doors	29 80
First upper room—2 windows, 12 lights each	7 68
1 chamber door taken	12 00
Second upper room—2 windows, of 20 lights each, and 1 of 12 lights	16 64
Third upper room—2 windows of 20 lights each, and 1 of 12 lights, and door lock taken	20 64
Fourth upper room—1 window of 20 lights, and 2 of 12 lights each	10 24
11 pairs of window shutters and blinds	82 50
In the kitchen—2 windows, each 9 lights, and one of 6 lights	7 68
1 brass knocker	5 00
	602 12

We, the undersigned, have examined the premises of Mr. Whitmore Knaggs, on the 9th of September, 1812, and estimate the damages done to his house as above stated, amounting to six hundred and two dollars and twelve cents.

JAMES HENRY.
WILLIAM BROWN.

Deposition of J. Witherell.

I certify that at Detroit, in the Territory of Michigan, in the summer of 1812, I commanded four companies of volunteers and detached militia of the said Territory, which were, by order of the Secretary of War, called into the service of the United States; that Whitmore

Knaggs was then a captain in the first regiment of territorial militia; that he, with the company under his command, were, previous to the 16th of August, and on that day, in the United States service, by order of the commanding general; that the said company did, before and on the said 16th of August, rendezvous at the house of said Captain Knaggs, which house stands on the margin of the Detroit river, above the Spring Wells, at a short distance from where the British army landed on said 16th of August, which position, I believe, Captain Knaggs did not abandon till the enemy were within pistol-shot of it, after which his barn was burnt, and his house, with such of the furniture as was not very portable, was shamefully cut and mangled, and some valuable articles totally destroyed; and if actions are the best index to motives, as there were no other troops stationed in that vicinity, nor any other buildings injured, it affords strong presumption that the occupation of the premises as aforesaid produced the outrages committed upon them.

JAMES WITHERELL.

Sworn before me, at Detroit, in the Territory aforesaid, and county of Wayne, this 6th day of December, A. D. 1817.

HENRY J. HUNT,
A. J. C. C. C. Wayne.

Letter of Governor Cass.

WASHINGTON, *January* 10, 1835.

SIR: In answer to your inquiries respecting the destruction of your father's property, I have to state that I passed it on the night of the surrender of Detroit, and at that time it had been taken possession of and seriously injured by the Indians. I do not know the extent of the loss sustained, nor did I exactly see any of the mischief which was done. But the facts are well known to me from general report, and I have no doubt of their truth.

Your father was truly and zealously attached to the cause of the United States, and from his intrepidity and activity was highly respected by the Indians. From the part which he took he rendered himself very obnoxious to all those who were in the British interest. He was twice captured during the war, sent to Quebec and Halifax, I believe, in irons, and suffered great indignities, privations, and injuries. I knew him well, and can testify to his merits. I have no doubt it was in consequence of his exertions in our cause that his property was destroyed.

Very respectfully, your most obedient servant,

LEW. CASS.

Mr. GEORGE KNAGGS, *Washington City.*

OCTOBER 23.

At the request of Mr. Baxter I state that I am well satisfied that the premises of Captain Knaggs were at one time occupied by the troops in the service of the United States.

LEW. CASS.

Letter from the War Department.

WAR DEPARTMENT, *February* 12, 1836.

SIR: In answer to your letter of the 25th of January, I have the honor to transmit reports from the Second and Third Auditors and from the Adjutant General respecting the accounts of the late Whitmore Knaggs. These papers furnish all the information which has been laid before me upon this subject.

I have some personal knowledge of the facts connected with this claim which it may not be improper to communicate.

The late Whitmore Knaggs was well known to me. He was a zealous and efficient officer, employed in the Indian department at Detroit, and possessing considerable influence over the Indians. He was warmly attached to the government of the United States, and repeatedly evinced this feeling under circumstances of personal danger to himself. In consequence of this decided conduct, he rendered himself peculiarly obnoxious to the officers of the British Indian department, and on the surrender of Detroit he was treated with great severity. His house, as I have understood, and have no doubt, was pillaged, and his property greatly injured or destroyed. How long he was kept in confinement at this time I do not know; but, subsequently, he escaped or returned to the United States and joined the army under the command of General Harrison. He was at the defeat of General Winchester at the river Raisin, where he was taken prisoner, and, if I recollect right, his life was saved by the interposition of an Indian who had been previously known to him. But he was treated by the British authorities with very unusual and improper rigor. It has been always reported that he was put in irons and was sent off to Quebec and Halifax. How long he remained in captivity I do not know; nor do I know the exact capacity in which he served at the river Raisin. But whatever he was, I am sure he was zealous and useful. It is probable that General Harrison could state with certainty the situation that Captain Knaggs held at the time he was taken prisoner.

These facts are stated either from my own knowledge or from the public reports of the day, and of their general truth there is no doubt.

Very respectfully, your most obedient servant,

LEWIS CASS.

Hon. E. WHITTLESEY,
Chairman Committee of Claims, H. of R.

Third Auditor's report.

TREASURY DEPARTMENT,
Third Auditor's Office, February 1, 1836.

SIR: I have the honor to return herewith the letter of the Hon. E. Whittlesey, together with the petition of George Knaggs and accounts of the late Whitmore Knaggs, which you referred to me for a report.

The information required by Mr. Whittlesey is in relation "to the accounts of Whitmore Knaggs so far as they relate to the employment of said Knaggs as Indian interpreter, and whether said accounts have been paid, and if not, what objections exist against their allowance," and "in what grade he served at the river Raisin when he was taken prisoner, and whether he was paid during the time of his captivity and until his return home." As regards the employment of Whitmore Knaggs as Indian interpreter, and the three accounts which accompany the petition, I have to state that Mr. Knaggs was employed as Indian interpreter at Detroit previous to the 1st April, 1802, and was paid in full for his services as such up to the 16th August, 1812, and also as assistant superintendent of Indian affairs from the 1st June, 1810, to the 16th August, 1812, ascertained from the records of this office. It is also found that Mr. Knaggs commanded a company of Michigan militia, for which service he received the pay and subsistence of a captain from the 15th July to the 16th August, 1812, the day of the surrender of Detroit, when he became a prisoner of war, until exchanged according to the articles of capitulation. It has not been found that Mr. Knaggs was in the military service at the river Raisin, or that he had any military command after the surrender of General Hull's army in 1812. It would appear from the enclosed copy of an order from General Izard to Quartermaster Rees, to advance $100 to Mr. Knaggs on the 18th May, 1814, that he had then lately been a prisoner in Canada as Indian interpreter in the service of the United States; and it appears that in a settlement he made with Governor Cass for his pay, &c., as assistant superintendent of Indian affairs, he accounted for the $100 received at Plattsburg "on his way from Quebec to Detroit." As the accounts of Governor Cass, and all payments to Mr. Knaggs for his services in the Indian department subsequent to August, 1812, were settled at the office of the Second Auditor, the information as to the grade he served in when he was taken prisoner, and whether he was paid during the time of his captivity, and how long he was in captivity, may possibly be obtained from that office. There is nothing found on the files of this office in relation thereto other than is herein given.

I have the honor to be, most respectfully, your obedient servant,
PETER HAGNER, *Auditor.*

Hon. LEWIS CASS, *Secretary of War.*

Letter from the Third Auditor.

TREASURY DEPARTMENT,
Third Auditor's Office, October 25, 1827.

SIR: I have this morning received a letter from Mr. James W. Knaggs, enclosing letters of administration granted to him with the will annexed of his late father, Whitmore Knaggs, deceased, and requesting me to transmit to you as his attorney the papers relating to the claim of the deceased, referred to in my letter to you of the 21st August last, with the view of having the claim brought before Congress. I accordingly send herewith all the testimony adduced in its support on file in this office. The commission under which this testimony was taken, and the report of the special commissioners before whom it was given, apply as well to other claims, and cannot therefore be parted from. It may be proper to observe that the claim was reported to Congress several years since by the late Commissioner of Claims as unprovided for by the laws under which he acted; and the law under which it was received by me from the files of Congress was, on examination of the proofs, found not to extend to the case.

The letters of administration are also, as desired by Mr. Knaggs, sent herewith.

Respectfully, your obedient servant,
PETER HAGNER, *Auditor.*

Mr. ALEXANDER D. FRAZER,
Detroit, Michigan Territory.

EVIDENCE FOR THE UNITED STATES.

TREASURY DEPARTMENT,
Third Auditor's Office, March 2, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, on the subject of an application to Congress by the administrator of Whitmore Knaggs. The papers in the case are found to have been, at the request of the administrator, transmitted by my predecessor on the 25th October, 1827, to Mr. Alexander D. Frazer, of Detroit, and of the letter which accompanied them, a copy is herewith furnished. The report of my predecessor of his proceedings under the law he had to execute was printed with Senate document No. 36, 2d session, 19th Congress.

An entry as to the claim of Whitmore Knaggs appears on sig. 13 of that document, and shows his claim to have been wholly for *personal property*, and for which *no allowance could be made.* Sums, it will be seen, to the amount of nearly $300,000, claimed for personal property, were all excluded from allowance; and I am not aware of a single instance in which authority has since been given by law for the payment of any of them.

With great respect, your most obedient servant,
JNO. S. GALLAHER, *Auditor.*

Hon. ALFRED P. EDGERTON,
Committee of Claims, House of Representatives.

HULL'S CAPITULATION.

HEADQUARTERS, DETROIT,
August 16, 1812.

It is with pain and anxiety that Brigadier General Hull announces to the northwestern army that he has been compelled, from a sense of duty, to agree to the following articles of capitulation:

ART. 1. Fort Detroit, with all the troops, regulars as well as militia, will be immediately surrendered to the British forces under the command of Major General Brock, and will be considered as prisoners of war, with the exception of such of the militia of the Michigan Territory who have not yet joined the army.

2. All public stores, arms, and all public documents, including everything else of a public nature, will be immediately given up.

3. His excellency Brigadier General Hull having expressed a desire that a detachment from the State of Ohio, on its way to join this army, as well as one sent from Fort Detroit, under the command of Colonel McArthur, shall be included in the above capitulation, it is accordingly agreed to; it is, however, to be understood that such part of the Ohio militia as have not joined the army will be permitted to return to their homes, on condition that they will not serve during the war. Their arms, however, will be delivered up, if belonging to the public.

4. The garrison will march out at the hour of 12 o'clock this day, and the British forces will take immediate possession of the fort.

J. McDONALD,
Lieut. Col. Militia, P. A. D. C.
J. B. GLEGG,
Major, A. D. C.
JAMES MILLER,
Lieut. Col. 5th U. S. Infantry.
E. BRUSH,
Col. 1st Reg. Michigan Militia.

Approved:

W. HULL,
Brigadier General, commanding N. W. Army.

Approved:

ISAAC BROCK,
Major General.

The army, at 12 o'clock this day, will march out of the east gate, where they will stack their arms, and then be subject to the articles of capitulation.

W. HULL,
Brigadier General, commanding the N. W. Army.

(3 Niles's Register, pp. 13, 14.)

IN THE COURT OF CLAIMS.

JAMES W. KNAGGS, ADMINISTRATOR OF WHITMORE KNAGGS, *vs.* THE UNITED STATES.

Brief of claimant.

Whitmore Knaggs was the owner of a farm at Spring Wells, near Detroit, Michigan, in 1812. On this farm he had a dwelling-house, barns, and storehouse, in which was a stock of goods suited to the trade of the country.

When the war of 1812 commenced, Whitmore Knaggs was a captain of the Michigan militia, and was called into the service of the United States. His plantation and houses were, by the orders of General Hull, used as a military station and barracks.

(See depositions of James May, pages 32, 33, 34; P. W. Knaggs, pages 35, 36; D. Cooper, 39; D. Reed, 40; Wm. Brown, 44; T. Mellez, 44; James Witherell, 71; General Cass's letter, 73.)

Captain Snelling, of the regular army, Knaggs's company, and part of Captain Huture Lecroix's company, were stationed at Knaggs's farm, and occupied his houses.—(See Jas. May's and D. Reed's depositions.) This occupation was continued till the morning of the 16th August, (the day of Hull's surrender,) when the detachment stationed at Knaggs's farm was ordered to Detroit. The property was immediately taken possession of by the enemy, who at once commenced the work of destruction.—(See depositions cited, and the letters of General Cass, page 72.)

In 1816 Congress passed an act authorizing the payment of property lost, captured, or destroyed by the enemy while in the military service of the United States.—(See S. L., volume 3, page 261, approved April 2, 1816.)

I refer to the 5th, 9th, 10th, 11th, 12th, 13th, and 14th sections.

The 11th section authorizes the appointment of a commissioner, whose duty it shall be to decide on all cases arising under the act, and who shall be subject to such rules and regulations as shall be prescribed by the President.

The 12th, 13th, and 14th sections prescribe the proceeding to be had in the cases. The 14th directs all adjudications of the commissioner to be recorded by his clerk; and when the judgment shall be in favor of the claim, the claimant, or his legal representative, is entitled to payment at the treasury, on the production of a copy of the judgment certified by the clerk.

An act was passed the 3d of March, 1817, (see S. L., volume 3, page 397,) by which the provisions of the act of 1816, as to houses and buildings destroyed, were limited to houses and buildings occupied by order of an officer or agent of the United States, and the commissioner was deprived of the power of deciding cases, and was directed to investigate them and report the facts to Congress for relief.

By another act passed the 20th of April, 1818, (3d volume S. L., page 466,) all claims not finally acted on before the 9th of April, 1818,

were transferred to the Third Auditor of the Treasury, who, in all adjudications upon the claims aforesaid, "shall be governed in all respects by the same rules, regulations, and restrictions as have heretofore been prescribed to the commissioner by the above-recited acts."

Mr. R. B. Lee was appointed commissioner to execute these acts.

On the 7th day of May, 1817, he issued a commission to Henry J. Hunt, Thomas Rowland, and Richard Smith, to collect the testimony and report the case to him.—(See commission, pages 29, 30; report of Hunt and Rowland, pages 30, 32; and the testimony reported from pages 32 to 72 of the record.)

On the 17th of February, 1818, Mr. Lee reported the case to Congress.

On pages 20 to 22 he states an account of the damages sustained by Knaggs for property destroyed by the enemy, amounting to $8,964 68¼. From 23 to 28 he states the testimony of the witnesses. Page 28 he reports the following summary of facts:

"It appears that claimant, in consequence of his house being occupied previous to and at the time the enemy attacked Detroit in the year 1812, as barracks, and his farm as a military station, and his being an Indian agent, after the capitulation of General Hull on the 16th of August in that year, sustained from said enemy, in injury to his buildings and in plunder of various articles of personal property, specially set forth in the evidence, a damage amounting to $8,964 68¼. Though the occupation of his dwelling-house and farm for the purposes aforesaid is fully proved, yet inasmuch as partial or consequential injury, according to the instructions of the President of the United States of the 21st of October, 1816, is not provided for in the law of the 9th of April, 1816, to entitle the claimant to payment in consequence of the occupation of his buildings as barracks or military depots by the United States, on account of their destruction by the enemy, the destruction must be total, which is not alleged in this case.

"This is a claim, therefore, which must depend entirely on the equity and beneficence of the legislature for its allowance."

The letter of Mr. Hagner, Third Auditor, (page 79,) states this claim "was reported to Congress by the commissioner of claims as unprovided for by the laws under which he acted; and the law under which it was received by me (Mr. Hagner) from the files of Congress was, on examination of the proof, found not to extend to the case."

In the argument of this case I shall contend:

I. That the only duty of Commissioner Lee was carefully to examine into the facts of the case, and to report the facts to Congress for their action.

The 10th section of the act of 1816 declared the loss to the sufferers, ascertained according to the provisions of that act, should be paid out of any money in the treasury not otherwise appropriated.

The 11th section empowers the commissioner to decide all cases arising under the act, subject to rules and regulations prescribed by the President.

The 14th section directs payment to be made at the treasury on

production of a copy of the judgment certified by the clerk of the commissioner.

I concede this act gave the commissioner power to decide these cases finally.

But I contend it was repealed, and a new course of proceeding substituted for it, by the act of 3d of March, 1817.

The first section of the act of 1817 enacts: "And that in acting on all claims arising under the aforesaid 9th section, as well those whereon commissions are now returned, and remain undecided, as those on which commissions may be hereafter executed, it shall be the duty of the commissioner appointed in virtue of the act aforesaid carefully to examine and investigate the same, and to report the facts in such case to Congress as soon as may be, that such provision may be made for the relief of the respective claimants as shall be deemed just and proper."

The 5th section enacts that all claims allowed by said commissioner of two hundred dollars and upwards shall be reviewed by the Secretary of War on a statement of the facts made to him by the said commissioner, and may be confirmed or rejected; and the amount of all claims allowed by the aforesaid commissioner less than two hundred dollars, and those of two hundred dollars and upwards, if confirmed by the Secretary of War, shall be paid in the same manner prescribed in the 10th and 14th sections of the act of 1816.

I submit this act repealed so much of the act of 1816 as authorized the commissioner to decide finally on the case.

The first section declares the power and duty of the commissioner. His duty is carefully to examine and investigate the cases. His only power is to report the facts to Congress, that such relief may be given as shall be deemed proper. He is not directed to report the relief he deems proper. The expression is, that such provision may be made for the relief of the claimants as shall be deemed proper. These expressions look to a provision to be made after the return of the report, and the words "shall be deemed proper," reserve the relief to the discretion of Congress; for Congress alone had the power to devise and give the relief.

The power to pay at the treasury all claims decided after this act, on the decision of the commissioner, was taken away. Even as to claims *allowed* before its passage, if the claim exceeded $200, the revision of the Secretary of War was necessary before it could be paid.

It was impossible any claim acted on by the commissioner after the passage of this act could be paid except by a law of Congress making for it such appropriation as Congress chose. The payment under the act of Congress was by the authority of the act, and not by authority of the commissioner. But if the commissioner had no authority to direct the claim to be paid, he had no authority to prevent the payment by any adjudication. His entire power under the act of 1817 was to report the facts to Congress. Congress was to devise the mode of relief. That this change in the mode of proceeding was, *pro tanto*, a repeal of the act of 1816, is shown by the general doctrine of implied repeals and by the case of Daviess *vs.* Fairburn.—(3 Howard, 636.)

II. The entire authority of the commissioner under the act of 1816 being to examine and investigate the case and report the facts to Congress for relief, any opinion on the right to relief was an excess of authority on his part, and cannot have the effect of an adjudication, and leaves the whole question of right undecided. The facts, however, reported are ascertained by competent authority, and the depositions taken are taken by authority of law.

Every special tribunal created by statute derives its whole power from the statute creating it, and Congress has the right to regulate its proceedings and limit its power.—(U. S. *vs.* Ferrera, 13 Howard, 46.)

The commission in the present case issued, and all the proceedings were had after the act of 1817 passed.

III. On the summary of facts reported the claimant is entitled to the payment of his demand, with interest.

On this point I rely on the 5th amendment to the Constitution of the United States.

The part of this amendment on which I rely is in the following words: "Nor shall private property be taken for public uses without just compensation."

Judge Story, in his commentaries, (§ 1790, book 3,) says: "The concluding clause is, that private property shall not be taken for public use without just compensation. This is the affirmance of a great doctrine established by the common law for the protection of private property. It is founded in national equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government almost all other rights would become utterly worthless if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice, and vain it would be to speak of such an administration when all property is subject to the will and caprice of the rulers."

It cannot be doubted at this day that the Constitution is a compact between the governing power and the governed. And it cannot be doubted that in all those articles which interpose between the government and individual citizens, the Constitution is intended for the protection of individual rights. That when the restraints of the Constitution are violated as to these individual rights, the act is one which entitles the individual to redress as an individual. As to those clauses of the Constitution which give the power to government to take individual rights upon stipulated terms, it cannot be doubted that when the government takes the rights it takes them on the terms specified in the Constitution. To suppose otherwise would be to exempt the government from the obligations of the Constitution. This clause, then, makes a fundamental compact with every individual that when his property is taken for public use he shall receive just compensation. The taking in such case is not tortuous but lawful, and being lawful, the Constitution raises the contract for compensation. In Harmony *vs.* Mitchell, (13 Howard, page 134,) the court said: "There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the

hands of the public enemy, and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for the public use. Unquestionably in such cases the government is bound to make full compensation to the owner, but such officer is not a trespasser."

IV. In this case the party is entitled to just compensation; and this is the principal sum, $8,964 68¼, with interest from February 17, 1818, the date of Mr. Lee's report, till paid.

This is necessary to comply with the Constitution. The promise to make just compensation implies this. The words just compensation mean just indemnification, a full satisfaction for the property taken. Upwards of forty years have passed since this property was taken, and lost and destroyed in consequence of the taking, and at this date a bare return of the principal value would be no compensation. To illustrate this question, I quote a passage from the opinion of Mr. Attorney General Wirt on the award of the Russian Emperor, on a question referred to him by the United States and Great Britain on the construction of her treaty of peace in 1816: "And then the only remaining question is, what is the award? It is that the United States are entitled to a *just indemnification* for the slaves and other property carried away by the British forces in violation of the treaty of Ghent. What is a *just indemnification* for a wrong? Is it the reparation of one-half or two-thirds of that wrong? Is it anything less than a reparation of the whole wrong? On these few simple ideas the whole question turns. If an injury is justly redressed which is only *half redressed*, then the British commissioner is right; but if an injury is only redressed when the redress is commensurate with the whole extent of the injury, then he is wrong. Let us put aside the striking and emphatic word *just*, and take the word indemnification alone, what does the word indemnification mean? The saving harmless from danger. Is that man saved harmless from danger who is left to bear one-half of the damage himself? This question seems to me too plain for discussion. The British commissioner, (Sir John Nichols,) who composed part of the board under the 7th article of the treaty of 1794, seems to have entertained a very different opinion on this subject from his countryman who is now seeking to execute the Emperor's award. His words are, to reimburse to claimants the original cost of their property, and all the expense they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations for losses. costs, and damages occasioned by illegal captures."—(See pages 31, 32, 2d vol. Opinions Attorneys General.) Again, (page 32,) he says: "They have thus lost the use of this property for eleven years. Is the meagre return of the average value at the time the slaves and other property were taken from them a just indemnification of the whole wrong?" &c.

This exposition of the words just indemnification applies with great force to the exposition of the words just compensation in the Constitution.

The analogy in maritime cases for unlawful captures applies also to the construction of these words. In such cases the compensation is

the original cost of the property, all expenses actually incurred, and interest on the whole amount.—(See Murray *vs.* Schooner Charming Betsy, 2 Cranch, 125; the case of the Anna Maria, 2 Wheat., 335; the Amiable Nancy, 3 Wheat., 560; the Appollon, 9 Wheat., 376.)

I submit that these authorities show that interest is part of the just compensation to which Knaggs is entitled.

I claim the interest should commence from the time the claim was put in form to be paid, and that is the date of Lee's report

S. S. BAXTER,
Of counsel for James W. Knaggs, Administrator.

IN THE COURT OF CLAIMS.

JAMES W. KNAGGS, ADMINISTRATOR OF WHITMORE KNAGGS, *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for property destroyed during the war of 1812, *at Spring Wells, near Detroit.*

MATERIAL AVERMENTS IN THE PETITION.

1. That Whitmore Knaggs, in 1812, was the owner of a farm at Spring Wells, near Detroit, whereon there was a dwelling-house, out-houses, storehouses, barns, and stables.

2. That the United States officers of said district directed that said property should be taken for the use of the United States, and that his farm was converted into a military station, and his houses, out-houses, barns, &c., were used for barracks.

3. That this gave them a military character, and the British and Indians, in consequence thereof, destroyed them.

4. That he claimed compensation therefor under the act of April 9, 1816, and the damages were estimated by Commissioner Lee, after taking evidence, at $8,964 68¼.

5. But such a construction was put upon the law by the President that this amount could not be paid under said act.

6. That petitioner is administrator of said Whitmore Knaggs.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That James W. Knaggs is the administrator of Whitmore Knaggs, with a will annexed.

Second. That Whitmore Knaggs resided at Spring Wells, near Detroit, in the summer of 1842, and was captain in the Michigan militia, and Indian interpreter and assistant superintendent of Indian affairs from June, 1810, to the 16th of August, 1812, at the time when Hull surrendered.—(*Cass's* letter, R., p. 74; *Hagner's* letter, R., 76.)

Third. That a portion of the time prior to Hull's surrender, some

of the men constituting his company were on and about his premises, and sometimes patrolled up and down Detroit river of a night.

Fourth. That Hull surrendered at Detroit on the 16th of August, 1812, and the American army marched out and stacked their arms at 12 o'clock of that day.—(*Articles of capitulation*, R., p. 83.)

Fifth. That Captain Knaggs, before daylight of that morning, was sent for by Hull, and immediately went with his men to Detroit. Snelling and his men also went.

P. W. Knaggs. "That during the night of the 15th and until the morning of the 16th they remained at this station; and before daylight on the said 16th, I well remember that my father received orders from the commanding officer at Detroit to march to Detroit with his company, which orders were conveyed to him by Abram F. Hull, son of General Hull; that as soon as my father's house was left by his company and a detachment, I think under command of Captain Snelling, the Indians began to plunder the house of its contents."—(R., p. 35.)

Sixth. That injury was thereafter and before done to the house of Knaggs and to his personal property. But there is no evidence of the extent of injury to either, or what was injured or destroyed.

Seventh. There is no evidence of the size or description of the dwelling-house, nor is it shown that there were out-houses, storehouses, barns, and stables, or that any injury was done to either, except one witness, who was not present, (Witherell,) says a barn was burnt. In this he is unsupported by any witness.

Eighth. No witness has testified that he knew that the property mentioned in the schedules ever actually existed or belonged to Knaggs.

Every affidavit is based upon "information and belief," or "to the best of the deponent's knowledge," without proof of his having any, "verily believes," or upon some other similar expression.

Ninth. Some of the schedules show that a portion of the property claimed to have been destroyed did not in fact belong to Knaggs.

1st. The property enumerated in the schedule at page 57 of the record is described as "belonging to Pierre Solo, of Detroit."

2d. Property enumerated at page 65 of the record is described as belonging to Pierre Libidu. $158.

3d. Property mentioned in schedule at page 66 is described as belonging to Robert Smith.

Tenth. A portion of the property claimed is shown by the schedules not to have been in Knaggs's house or buildings at Spring Wells.

1. The schedule at page 48 of the record has this caption:

"Memorandum of property taken out of Fort Detroit after the capitulation on the 16th day of August, 1812, belonging to Whitmore Knaggs."

This schedule is footed at $4,191 06¼.

The schedule at page 51 of the record specifies property thus: "Sundries taken out of the house of R. Attwater, esq., after the capitulation."

This schedule is footed at $1,291 25.

This shows that $5,482 31¼, being almost two-thirds of the whole

amount averred to have been destroyed, was at a place different and distant from Knaggs's house.

Eleventh. There is but one schedule of property described as being at Knaggs's house.

At page 55 of the record there is a schedule or memorandum of property, said to be taken "at said Knaggs's house." This includes two pair of scissors, three thousand needles, twenty-four papers of pins, sundry silver things, and a quilt, "then at my house."

This schedule only amounts to $223 75.

Twelfth. Neither of the remaining memorandums state where the property was that is alleged to have been taken.

Thirteenth. None of the affidavits to these schedules were taken under the direction of Commissioner Lee. They all appear to have been sworn to between the 15th and 18th of September, 1812, before the same individual, describing himself as a local officer.

Fourteenth. Five of these schedules purport to have been sworn to by two women, "Therese and Elizabeth Descomtes die Labadi."

Fifteenth. That immediately after the surrender of Hull, Knaggs had to secrete himself, and his family had also to do so, to keep the Indians from killing them, and that he privately escaped to Erie, and thence went to Washington, and did not return until the winter of 1813.

P. W. Knaggs. Deponent further saith that his father was sought for by the Indians after the capitulation of Detroit, who were determined to destroy him; and that this deponent's father and this deponent only escaped the vengeance of the savages by secreting themselves amongst their friends; that they were advised and assisted by their friends to depart from the city of Detroit in great secrecy; that this deponent went with his father, and with him landed at Erie, in Pennsylvania, and thence went to Washington; that from Washington this deponent's father and this deponent, in the winter of 1813, went to Sandusky, in Ohio; and from Sandusky, at the request of General Harrison, this deponent's father and this deponent joined General Winchester at Fort Meigs, and that they were taken at the battle of the Raisin in the month of ——, 1813; that on the day of said battle this deponent and his father were separated, and this deponent's father was taken to Malden, and thence to Montreal; that this deponent and his father were saved at the battle aforesaid by the influence of two Indians; that this deponent was taken to Detroit, where he was concealed for some months in the Reverend Gabriel Richards's house; and that during the occupancy of this place (the city of Detroit) by the British, this deponent and the rest of this deponent's father's family were imminently in danger of losing their lives; that the Indians constantly sought to destroy them; and this deponent further says that his father returned about one year after the battle aforesaid to his family at Detroit.—(R., p. 35.)

Sixteenth. Not one witness attempts to enumerate the property destroyed, or to speak of its value, except *Reid*, (R., p. 40,) who says he "believes that the account exhibited by the said Captain Knaggs, amounting to $8,964 18¾, is just and true" But he does not state that he personally knew anything about it, or had any means of know-

ing. Nor does he specify the items constituting this sum, or any of them. He simply gives his belief that the gross sum claimed was correct.

Seventeenth. The claimant does not show that there were arms or ammunition or military stores in Knaggs's house, or that it was occupied by our troops when the injury was done, or that it was hired by the government.

Eighteenth. He does not show that the injury complained of was occasioned by Knaggs and Snelling having been there previously with their men.

Nineteenth. It is proved that the injury to Knaggs's property was occasioned by hostile feelings towards him personally.

The following evidence establishes this fact:

May. "From the situation of Captain Knaggs, at that time commanding a company of militia stationed as aforesaid, and agent of the Indian department, together with his house having been occupied by the troops under Captain Snelling, and his own militia company, it is his firm opinion that Captain Knaggs's sufferings and losses originated."—(R., p. 34.)

"This deponent further testifies, that, after the capitulation, the savages were determined to destroy Captain Knaggs, who was compelled to take shelter in the house of this deponent until he could find a safe opportunity of retiring to the United States, which he effected in a few weeks. This deponent further testifies, after Captain Knaggs's departure, the savages were seeking to destroy his children—five in number—who, together with their mother, secreted themselves for several months in this deponent's house, and amongst their friends."—(R., p. 34.)

This evidence would seem to show that Knaggs was secreted in Canada.

P. W. Knaggs. "This deponent further saith that his father was sought for by the Indians after the capitulation of Detroit, who were determined to destroy him; and that this deponent's father and this deponent only escaped the vengeance of the savages by secreting themselves among their friends."

"That this deponent was taken to Detroit, where he was concealed for some months in the Rev. Gabriel Richards's house, and that during the occupancy of this place (city of Detroit) by the British this deponent and the rest of this deponent's father's family were imminently in danger of losing their lives; that the Indians constantly sought to destroy them."—(R., p. 36.)

Cooper. "Your deponent verily believes that Captain Knaggs's property was destroyed and plundered in consequence of his house being occupied as quarters for the troops, and of his being in the Indian department."—(R., p. 38.)

Brown. "I have also heard the British militia officers assert that the destruction and damage done to Captain Knaggs's property was on account of his house being occupied by troops, and of his being in the Indian department."—(R., p. 42–'3.)

Cass. "He (Knaggs) was a zealous and efficient officer, employed in the Indian department at Detroit, and possessing considerable influ-

ence over the Indians. He was warmly attached to the government of the United States, and repeatedly evinced this feeling under circumstances of personal danger to himself. In consequence of this decided conduct he rendered himself peculiarly obnoxious to the officers of the British Indian department, and on the surrender of Detroit he was treated with great severity. His house, as I have understood and have no doubt, was pillaged, and his property greatly injured or destroyed."—(R., p. 74.)

This evidence conclusively shows that the real cause of the injury to Knaggs's property was personal feeling and hostility to him.

Twentieth. The most valuable part of Knaggs's furniture and effects were removed before the destruction, after the surrender.

May says the enemy broke and destroyed, "with the exception of such part *of the most valuable movable property*, was plundered and carried off by the enemy," &c.—(R., p. 33.)

Twenty-first. The claimant omitted to call and swear, when he took his testimony, the persons who had previously made affidavits to his schedules.

LEGAL PROPOSITIONS.

FIRST. *The ex parte affidavits contained in the record are not legal evidence, and cannot be considered in deciding the case.*

There are found in the record several *ex parte* affidavits, taken in 1812. These are objected as not evidence, and there is no rule of law that makes them admissible. That claimant, in 1817, had full opportunity to make proof of the circumstances and extent of his loss. The evidence then taken has been preserved, and is in the record, and can be alone considered.

SECOND. *The report of Commissioner Lee is not evidence in this cause of the fact of the loss for which compensation is claimed.*

The evidence was taken under the law, and is before the court. What the commissioner thought of it was a matter of opinion, and not of fact. If his opinions are to control, then this claim must be rejected, because his opinion was against it. But his opinions do not stand for established facts. When he found that the claim was not within the law, whatever he said beyond that was superfluous, and can have no effect whatever.

THIRD. *This claim is not provided for by any existing law.*

The acts of 1816 and 1817 long since ceased to be in force, and nothing can be claimed under them. But if still in life, they would not apply. They related to property destroyed, and not to cases of stealing and carrying away.

FOURTH. *If the act of* 1816 *were in force, it would not extend to property not found in the buildings occupied as barracks.*

The act of 1816 was passed for the purpose of compensating those who had sustained losses occasioned by the government having occupied their property for military purposes. The property of the owner of the building found at another place and destroyed must have been destroyed for some other reason than such occupancy. Hence, that law made no provision for compensation for such losses.

In this case most of the property claimed to have been destroyed or stolen is shown to have been in other places, and not in Knaggs's building. A large portion of it was in Fort Detroit and some in the house of R Attwater, who was then secretary of the Territory. Very little of it is stated to have been in claimant's house. His horses, sheep, and fowls could not have been in the house and taken because of its occupancy. His gold, silver, and bank notes are shown to have been in the fort at Detroit, except one parcel of bills, amounting to $320. How it happened that this latter parcel was not removed to a place of safety with the others is not explained. It would have been natural to have taken these bills with them when the family left the house. This is true in relation to many articles found in the schedules.

FIFTH. *When there are strong suspicious circumstances shown against the bona fides of a claim, unless they are explained by the evidence, the claim should be rejected.*

The evidence in this case is full of suspicious circumstances, which have not been explained. The inventories are all in detail, down to the most minute particulars, and attested to, in most instances, by two females. How these details became known to them is what remains unexplained. Why they did not testify when the evidence was taken is not shown. The claimant's son and others swear that Knaggs had to be kept secreted for weeks, and then he escaped and went to Erie and Washington. These schedules were made out and sworn to by these women and others within a month from the surrender of Detroit. How this was done by a secreted man is not explained. There are other strange circumstances in the case.

R. H. GILLET, *Solicitor.*

Dated 27th March, 1860.

IN THE COURT OF CLAIMS.

May 31, 1860.

WHITMORE KNAGGS'S ADMINISTRATOR *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner's testator, Whitmore Knaggs, was in the employment of the United States as an Indian interpreter and as assistant

superintendent of Indian affairs at Detroit for many years before the 16th day of August, A. D. 1812. He was also in the service of the United States, as the captain of a company of Michigan militia, from the 15th day of July till the 16th day of August, A. D. 1812.—(See letter of Third Auditor to Secretary of War, of February 1st, A. D. 1836) On the 15th day of August, A. D. 1812, his company, by order of Brigadier General Hull, then commanding the Northwestern army, was stationed at his house, near Spring Wells, and his house was then occupied as barracks for military purposes. On the 16th day of August, A. D. 1812, Fort Detroit, and all the troops, regulars as well as militia, were surrendered by General Hull to the British forces under the command of Major General Brock. On the morning of that day, the deceased, by order of the commanding officer at Detroit, marched with his company to that place. Soon after his house was left by his company the Indians began to plunder its contents. They destroyed every article of clothing and furniture, broke and destroyed trunks, demolished windows and doors, wantonly killed the cattle of every description on his farm and about his house, and burnt his barn.

The deceased, in his lifetime, presented a claim for indemnity to Richard Bland Lee, a commissioner appointed under the act of Congress approved April 9, A. D. 1816, ch. 40, (3 Stat. at L., p. 261;) and Mr. Lee, by a commission dated May 7, A. D. 1817, appointed Henry J. Hunt, Thomas Rowland, and Henry Smyth, commissioners (any one or more of them to act) to take the testimony of such witnesses as might be brought before them or any of them, relative to the claim. Afterwards, Henry J. Hunt and Thomas Rowland made a report to Richard Bland Lee, commissioner, enclosing the testimony which had been brought before them by the deceased. Their report embraced other cases, and contains this statement: "From that period until the present those individuals have brought before us the testimony herein enclosed, all in the form of affidavits where they are by citizens, and certificates when by officers of the army."

Amongst the testimony reported by the special commissioners are the affidavits of Therese Descomtes Labadi, Elizabeth Descomtes Labadi, Pierre Solo, Jacques Demars, Jean Batiste Campeau, and Robert Smith, taken in 1812, to which the solicitor objects as follows: "These are objected to as not evidence, and there is no rule of law that makes them admissible. That claimant, in 1817, had full opportunity to make proof of the circumstances and extent of his loss. The evidence then taken has been preserved, and is in the record, and can be alone considered." But, under the act of 1816, authority was expressly given to the commissioner "to establish, under the direction, or with the assent, of the President of the United States, such rules, as well in regard to the receipt of applications of claimants to compensation for losses provided for by this act as the species and degree of evidence, the manner in which such evidence shall be taken and authenticated, as shall, in his opinion, be the best calculated to attain the objects of this act; paying a due regard, in the establishment of such regulations, as well to the claims of individual justice as to the interest of the United States," (§ 12, 3 Stat. at L., p. 263;)

and the commissioner, having received and acted upon these affidavits, it must be presumed, the contrary not appearing, that they were admissible under the rules which he had established. They are, therefore, competent evidence for all the purposes of the acts of Congress of April 9, A. D. 1816, and of March 3, A. D. 1817.—(3 Stat at L., p. 397.)

Commissioner Lee, in his report, presented the following *summary of facts:* "It appears that claimant, in consequence of his house being occupied, previous to and at the time the enemy attacked Detroit in the year 1812, as barracks, and his farm as a military station, and his being an Indian agent, after the capitulation of General Hull, on the 16th of August of that year, sustained from said enemy in injury to his buildings, and in the plunder of various articles of personal property, specially set forth in the evidence, a damage amounting to $8,964 68¼.

"Though the occupation of his dwelling house and farm for the purpose aforesaid is fully proved, yet inasmuch as partial or consequential injury, according to the instruction of the President of the United States of the 21st of October, 1816, is not provided for by the law of the 9th April, 1816, to entitle the claimant to payment in consequence of the occupation of his buildings as barracks or military depots by the United States, on account of their destruction by the enemy, the destruction must be total, which is not alleged in this case.

"This is a claim, therefore, which must depend entirely on the equity and beneficence of the legislature for its allowance."

This claim was afterwards presented to Congress, and by a resolution of the House of Representatives of December 13, A. D. 1856, was referred to this court. The petitioner claims the sum of $8,964 68¼, the amount mentioned in Commissioner Lee's report, with interest, and relies mainly, for the facts of his case, on that report and the evidence on which it was based. His claim is as follows:

1. For property taken out of Fort Detroit after the capitulation on the 16th day of August, 1812, belonging to Whitmore Knaggs, $4,191 06¼.

It nowhere appears how, or when, or for what purpose this property was carried to the fort, or by whom it was taken therefrom, or that it was destroyed, or that Whitmore Knaggs lost it. All that we have in relation to it is a memorandum, headed "Memorandum of property taken out of Fort Detroit after the capitulation on the 16th day of August, 1812, belonging to Whitmore Knaggs," and containing a specification of each item, with its value annexed; and the affidavit of Therese and Elizabeth Descomtes die Labadi "that the foregoing statement is true and just, to the best of their knowledge." There is nothing in this memorandum, or in the affidavit annexed to it, tending to sustain a claim against the United States for any sum whatever; nor is there anything in either at all inconsistent with the fact that all the property mentioned in the memorandum was actually taken out of the fort by Whitmore Knaggs himself. Under the articles of capitulation, "all public stores" were given up to the enemy, but private property was doubtless respected.

2. For property taken out of the house of R. Attwater and destroyed by the Chippewas, Pottawatomies, Ottawas, and Delawares, on the 16th of August, A. D. 1812, after the capitulation, belonging to Whitmore Knaggs, $1,291 25.

The evidence to support this item is a memorandum headed "Memorandum of property taken and destroyed by the following Indians: Chippewas, Pottawatomies, Ottawas, and Delawares, on the 16th of August, 1812, belonging to Whitmore Knaggs, viz: Sundries taken out of the house of R. Attwater, esq., after the capitulation," and containing a specification of each item of property, with its value; and the affidavit of Therese and Elizabeth Descomtes die Labadi, "that the foregoing statement is true and just, to the best of their knowledge." Taking all this to be true, it merely shows that Whitmore Knaggs had property in the house of one R. Attwater, and that it was taken therefrom and destroyed by hostile Indians on the 16th day of August, A. D. 1812. Something more is necessary to render the United States liable for the loss which he sustained.

3. For property belonging to Whitmore Knaggs, taken on the 16th of August, A. D. 1812, by the Ottawas, Chippewas, Pottawatomies, and Wyandott Indians, at his house, $223 75.

4. For property taken and destroyed by the Chippewas, Pottawatomies, and Ottawas, out of his house, on the 16th day of August, A. D. 1812, belonging to Whitmore Knaggs, $2,310.

It does not appear from the evidence that any of the property embraced by these two items had been impressed, or taken by public authority, for the use or subsistence of the army, or was a house or building, or was in the military service of the United States, either by impressment or contract; and hence the provisions of the acts of 1816 and 1817 do not apply to them.—(3 Stat. at L. pp. 262, 263, ch. 40, §§ 5, 9; ibid. p. 398, ch. 110, § 3.) And the only evidence offered in support of them being some of the *ex parte affidavits* already noticed, which are only admissible in evidence for the purposes of the acts of 1816 and 1817, these two items are wholly unsupported by evidence as claims against the United States independently of those acts. They cannot, therefore, be sustained.

5. For property taken by the Pottawatomies, Delawares, Ottawas, and Chippewas, at the house of Whitmore Knaggs, on the 16th of August, A. D. 1812, belonging to Pierre Solo, $88. Ditto, taken at Reuben Attwater's house, $35. Making $123.

6. For horses and hogs killed by the Indians on the 20th day of August, A. D. 1812, belonging to Pierre Labadi, of Detroit, $158.

7. For clothing and cash taken by the Chippewas, Pottawatomies, and Ottawas, &c., on the 16th day of August, A. D. 1812, from the house of Whitmore Knaggs, belonging to Robert Smith, $65 50.

It not appearing from the evidence that the petitioner's intestate had any interest whatever in the property mentioned in the last three items, but, on the contrary, it appearing that it belonged to others, his representative can have no claim against the United States on account of its loss.

8. For property of Whitmore Knaggs, esq., which was destroyed

on or after the 16th of August, A. D. 1812, by the Ottawas, Chippewas, Pottawatomies, Wyandotts, and Delawares, $602 12.

As to so much of the property mentioned in this item as consists of furniture, the remarks which we have made on the 3d and 4th items are applicable to it; and the claim for its loss is, therefore, rejected.

The residue of this item is for injuries done to the house of Whitmore Knaggs; but although previously to the 16th of August, A. D. 1812, it was occupied by an order of an officer of the United States as barracks for the military forces of the United States, yet it was not destroyed by the enemy while it was so occupied, nor was such occupation the cause of its destruction. It appears from the evidence that the house was vacated by the forces of the United States early on the morning of the 16th of August, A. D. 1812, and that the injuries complained of were done afterwards. We cannot say, from the evidence, that those injuries were committed while the house was occupied as barracks by the forces of the United States; or, that their occupation was the cause of those injuries. The just inference from the evidence is, that before their commission, the forces by whom the house had been occupied were actually surrendered as prisoners of war to the enemy. This portion of the petitioner's claim cannot, therefore, be sustained under the acts of 1816 and 1817. Nor can it be sustained as a claim against the United States independently of those acts, for so considered, it is unsupported by evidence. The evidence by which its amount is ascertained is a mere certificate, not supported even by an *ex parte* affidavit, and is, therefore, not admissible, except in favor of a claim provided for, either by the act of 1816, or by the act of 1817.

Our opinion is, that the petitioner is not entitled to relief.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 268.

NATHANIEL P. CAUSIN, ADMINISTRATOR OF JOHN H. STONE.

DECEMBER 18, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

NATHANIEL P. CAUSIN, ADMINISTRATOR OF JOHN H. STONE, vs. THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's letters of administration.
3. Claimant's evidence, transmitted to the House of Representatives.
4. Claimant's brief.
5. United States solicitor's brief.
6. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Court of Claims:

Your petitioner, Nathaniel Pope Causin, respectfully shows that he is the administrator (see certificate herewith filed) and one of the heirs-at-law of John H. Stone, deceased; that said Stone was, in January, 1776, appointed a captain, and in December following a

colonel in the Maryland line of the continental army; that, as a colonel in said army, he participated in the battle at Germantown, and received in that action two severe wounds, which compelled him to resign his said commission in the army on the 1st of August, 1779, and rendered him incapable of getting a livelihood from that time until the date of his death, which took place on the 5th day of October, 1804.

By reason whereof, and by virtue of two resolutions of Congress, one dated August 26, 1776, and the other dated third day of June, 1784, the said Stone became entitled to receive thirty-seven dollars and fifty cents per month, from the 1st of August, 1779, until the 5th October, 1804, with interest thereon, at six per cent. per annum, from the time the several payments became due until the same were made; but that, nevertheless, no part thereof was paid until the act of January 18, 1855, (10 Stat , p. 843,) was passed, when the said monthly pay only was paid, because the accounting officers of the treasury construed the said act of 1855 as not appropriating money for the payment of the interest due under the said resolution of 1784. (See account herewith filed.)

Your petitioner, therefore, prays that a judgment may be rendered for the interest thereon due under the said resolution.

Your petitioner states that he, as the legal representative of the said deceased, is the sole owner of the demand herein presented.

BLAIR, *for Petitioner.*

DISTRICT OF COLUMBIA, *County of Washington,* } *sc:*

N. P. Causin, the petitioner above named, being duly sworn, on his oath states that he verily believes the facts in the above petition are true.

Sworn to and subscribed before me this 9th day of April, 1860.

N. CALLAN, [L. S.]
Justice of the Peace.

UNITED STATES OF AMERICA.

WASHINGTON COUNTY, *District of Columbia, to wit:*

To all to whom these presents shall come, greeting: Know ye, that on the 23d day of January, in the year of our Lord 1855, letters of administration of all and singular the goods, chattels, and credits, which were of Colonel John H. Stone, late of Maryland, deceased, was, by the orphans' court of Washington county aforesaid, granted and committed unto Nathaniel P. Causin, of the county and District aforesaid, the said Nathaniel P. Causin having first entered into bond, with approved securities, for the faithful performance of the duties thereof.

Witness, William F. Purcell, esq., judge of the orphans' court of Washington county, in the District of Columbia, this 7th day of April, anno Domini 1860.

[L. S.]

Test:

ED. N. ROACH,
Register of Wills.

IN THE COURT OF CLAIMS.

N. P. CAUSIN, ADMINISTRATOR, *vs.* THE UNITED STATES.

The claimant offers in evidence the papers certified by the Register of the Treasury, under date of April 9, 1860, and is ready for trial.

M. BLAIR, *for Claimant.*

Papers from the Treasury Department.

No. 116693.] TREASURY DEPARTMENT,
First Auditor's Office, January 26, 1855.

I hereby certify that I have examined and adjusted an account between the United States and the legal representatives of Colonel John H. Stone, deceased, and find that the sum of eleven thousand three hundred and thirty-one dollars and sixteen cents is due from the United States to them for the half pay of a colonel in the continental line of the army of the United States, from the first day of August, 1779, to the 5th day of October, 1804—viz: twenty-five years, two months, and five days, at $37 50 per month, $11,331 16—as certified by the Third Auditor, and admitted and certified by the Second Comptroller of the Treasury, under date of January 26, 1855; which sum is payable out of any money in the treasury not otherwise appropriated, as provided in "An act for the relief of the legal representatives of Colonel John H. Stone," approved January 18, 1855, as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

$11,331 16. T. L. SMITH, *First Auditor.*

The FIRST COMPTROLLER *of the Treasury.*

COMPTROLLER'S OFFICE.

I admit and certify the above balance this 27th day of January, 1855.

E. WHITTLESEY, *Comptroller.*

The payment by the act is to be made to the legal representatives.

ELISHA WHITTLESEY.

The REGISTER *of the Treasury.*

COMPTROLLER' OFFICE, *January* 30, 1855.

It satisfactorily appears, from papers filed herewith, that Colonel John H. Stone died without will in Maryland; that letters of administration were not granted on his estate; and that letters of administration have been granted to Nathaniel Pope Causin, in this District of Columbia, as near of kin as any of the survivors in equal degree, and that no one of the same degree is living in Maryland; all of which will more fully appear by the papers filed herewith.

The amount found due within should be paid to Nathaniel Pope Causin, the legal representative of Colonel John H. Stone.

ELISHA WHITTLESEY, *Comptroller.*

TREASURY DEPARTMENT,
Register's Office, April 9, 1860.

I hereby certify that the foregoing report in favor of the legal representatives of Colonel John H. Stone, deceased, is a true copy of the original on file in this office.

F. BIGGER, *Register.*

TREASURY DEPARTMENT, *April* 17, 1860.

SIR: Your letter of the 16th instant is received, requesting me to direct the accounting officers to allow and pay certain interest claimed by N. P. Causin, esq., administrator of John H. Stone, under the act of January 18, 1855.

This claim appears to have been duly settled, according to the terms of the act, and paid upon the requisition of the Secretary of War. Your letter states that payment was received on the 26th of January, 1855.

The rule of this department from its establishment has been, that the accounting officers will not be directed to open and revise a settlement at the instance of any claimant, unless new and material facts are established, or authority is given by further legislation.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

M. BLAIR, *Attorney of N. P. Causin, Washington.*

COURT OF CLAIMS.

JOHN H. STONE'S ADMINISTRATOR *vs.* THE UNITED STATES.

Brief of M. Blair, for claimant.

I. The special act of January, 1855, (10 Stat., 843,) expressly puts the case within the resolution of June 3, 1784, and therefore the interest allowed by it in all cases to which it applies should have been paid to the petitioners.

II. The department has heretofore, and at an early day, observed this obvious requirement of the law in such cases. (See case of Mrs. Hamilton, under special act, 6 Stat., 173.)

III. Where Congress did not intend to give interest, the special acts relating to such cases provide accordingly. (See act of June 23, 1836, 6 Stat., p. 641—Baird's case.)

It may be observed, also, in reference to Baird's case, that though

the department was not authorized to pay the interest, in consequence of the prohibition in the act of 1836, that restriction has since been removed, and the interest paid on a decision of this court. The court held that the act of 1836, whilst not providing for or permitting the interest to be paid by the Treasury Department, nevertheless showed that it was due.

M. BLAIR, *for Petitioner.*

IN THE COURT OF CLAIMS.

JOHN H. STONE'S ADMINISTRATOR *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for interest on an invalid pension claim paid under a private act.

AVERMENTS IN THE PETITION.

1. That John H. Stone was entitled to an invalid pension for disability incurred during the war of the revolution.
2. That Congress passed an act on the 18th of January, 1855, to pay his legal representatives the amount of said invalid pension claim, which was paid.
3. But that interest thereon was not paid, but is now due, and is now claimed.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR, AS SHOWN IN THE RECORD.

First. That on the 18th day of January, 1855, Congress passed an act (10 U. S. L., 843) in these words:

"That the Secretary of the Treasury is hereby authorized and required to pay, out of any money in the treasury not otherwise appropriated, to the legal representatives of Colonel John H. Stone, the half pay of a colonel in the continental line of the army of the United States; the said half pay to commence on the first day of August, seventeen hundred and seventy-nine, and to terminate on the fifth day of October, eighteen hundred and four, the day of his death. The same being then due and unpaid to the said Colonel John H. Stone in virtue of the resolution of Congress of the twenty-sixth of August, seventeen hundred and seventy-six, which engaged to allow half pay for life to such officers and soldiers as should lose a limb in any engagement, or be so disabled in the service of the United States of America as to render them incapable afterward of getting a livelihood; the said pay to commence from and after the time that their pay as an officer or soldier ceased."

Second. The resolution referred to in said act is as follows, (1 Old J., 454, 455:)

"*Resolved,* That every commissioned officer, non-commissioned officer, and private soldier, who shall lose a limb in any engagement,

or be so disabled in the service of the United States of America as to render him incapable afterward of getting a livelihood, shall receive during his life, or the continuance of such disability, the one-half of his monthly pay from and after the time his pay as an officer or soldier ceases; to be paid by the committee as hereinafter mentioned.

"That every commander of a ship-of-war, or armed vessel, commissioned officer, warrant officer, marine, or seaman, belonging to the United States of America, who shall lose a limb in any engagement in which no prize shall be taken, or be therein otherwise so disabled as to be rendered incapable of getting a livelihood, shall receive during his life, or the continuance of such disability, the one-half of his monthly pay from and after the time that his pay as an officer, or marine, or seaman, ceases; to be paid as hereafter mentioned. But in case a prize shall be taken at the time such loss of limb or other disability shall happen, then such sum as he may receive out of the net profits of such prize, before a dividend is made of the same, agreeable to former orders of Congress, shall be considered as a part of his half pay, and computed accordingly.

"That every commissioned officer, non-commissioned officer, and private soldier, in the army, and every commander, commissioned officer, warrant officer, marine, or seaman, of any of the ships-of-war, or armed vessels belonging to the United States of America, who shall be wounded in any engagement so as to be rendered incapable of serving in the army or navy, though not totally disabled from getting a livelihood, shall receive such monthly sum as shall be judged adequate by the assembly or other representative body of the State where he belongs or resides, upon application to them for that purpose, provided the same doth not exceed his half pay: *Provided*, That no commissioned officer, non-commissioned officer, and private soldier, in the army, commander, commissioned officer, warrant officer, marine, or seaman, of any of the ships-of-war, or armed vessels beloning to the United States of America, who shall be wounded or disabled, as aforesaid, shall be entitled to his half pay or allowance unless he produce to the committee, or other officer appointed to receive the same, in the State where he resides or belongs, or to the assembly or legislative body of such State, a certificate from the commanding officer who was in the same engagement in which he was so wounded, or in case of his death, from some other officer of the same corps, and the surgeon that attended him, or a certificate of the commander of the ship-of-war or armed vessel engaged in the action, in which any officer, marine, or seaman, received his wound, and from the surgeon who attended him, of the name of the person so wounded, his office, rank, department regiment, company, ship-of-war, or armed vessel, to which he belonged, his office or rank therein, the nature of his wound, and in what action or engagement he received it.

"That it be recommended to the several assemblies or legislative bodies of the United States of America to appoint some person or persons, in their respective States, who shall receive and examine such certificates as may be presented to them, and register the same in a book, and also what support is adjudged by the assembly or legislative body of their State to those whose case requires but a partial support;

and also of the payment, from time to time, of every half pay and other allowance; and of the death of such disabled person, or ceasing of such allowance; and shall make a fair and regular report of the same quarterly to the Secretary of Congress, or Board of War, where a separate record shall be kept of the same.

"That it be recommended to the assemblies or legislative bodies of the several States to cause payment to be made of all such half pay, or other allowances, as shall be adjudged due to the persons aforenamed on account of the United States.

"*Provided*, That all such officers and soldiers that may be entitled to the aforesaid pension, and are found capable of doing guard or garrison duty, shall be formed into a corps of invalids, and be subject to the said duty; and all officers, marines, and seamen of the navy, who shall be entitled to the pension aforesaid, and shall be found capable of doing any duty on board the navy, or any department thereof, shall be liable to be so employed"

Third. That under the act of 1855 there was paid by the United States to the legal representatives of said Stone a half-pay pension, computed from the first day of August, 1779, to the fifth day of October, 1804, amounting to the sum of $—.

Fourth. There is no evidence that said Stone ever applied to the authorities of his State, or person appointed by it, or to the United States, for a pension under the resolution of the old Congress above quoted, nor that he was, in fact, an invalid, or served in the war of the revolution.

Fifth. There is no evidence that at the time of settlement of the claim of Stone's legal representative, under the act of 1855, he demanded, or has since demanded, interest upon said pension claim.

LEGAL PROPOSITIONS.

FIRST. *There is no law or resolution of the old Congress promising invalid pensioners, or authorizing the payment to them, of interest on such sum as might be justly payable to them.*

The resolution of the old Congress, relating to the payment of interest, is that of June 3, 1784, (4 Old J., 443,) is in these words:

"That an interest of six per cent. per annum shall be allowed to all creditors of the United States, for *supplies furnished* or *services done*, from the time the payment became due."

In case of loans, and where certificates were authorized to be issued, other laws authorized the payment of interest.

But there is no law authorizing it in a case like the present. Stone's claim was not for supplies nor for services rendered: his claim was for a disability received, and not for services rendered. He did not come within the reason or principles of the resolution of June 3, 1784, which looked to satisfying those who had demands due them for supplies needed and used during the war, and for salaries and services rendered, which the government was then unable to pay. It had no reference to invalid or other pensions, and, it is believed, has never been so construed. It cannot be fairly so construed now. If this is

so, then the original claim was not one bearing interest, and the present claimant has not shown that it has been put upon interest by or under any law since passed.

If the original claim was not put upon interest by virtue of any law, and no law has since been passed authorizing or requiring it to bear interest, then none could be adjudged to be paid, if the original claim were now before the court for adjudication.

This case is wholly unlike those cases where commutation and half pay were justly claimable for services, but were not paid. Dr. Baird's case, if now considered as law in this court, is no authority for allowing interest upon the original or the present claim. Baird was considered by Congress as entitled to five years' full pay, in lieu of his right to half pay for life. In other words, that he was entitled to commutation pay. If he had received his commutation certificate, it was claimed that it would have been payable with interest, and fundable in government stock bearing interest. Congress directed that the principal should be paid, which was done. His representative applied to this court, claiming the whole demand, including interest, less what had been paid, and this court is understood to have awarded it to him upon the ground that the original contract bore interest, and that Baird was entitled to the whole sum thus found due. Congress directed the balance thus found to be paid; but since have, it is understood, refused to order or authorize any such payments. The present case is in no respect like that. Here the original claim, if there was any such, was not upon interest and never was put upon interest by virtue of any subsequent law. If a disabled soldier dies without demanding an invalid pension, he is presumed to have rejected or abandoned the offer of one by the government. The matter does not assume the form of an obligation until applied for, and proved and awarded. Demands payable on demand do not bear interest before they are demanded. When the present government assumed the legal liabilities of the old, it found it nowhere enacted that unclaimed invalid pensions were payable without demand, and much less did it find that interest was payable thereon, and that in a case where the party had refused or omitted to make a claim in conformity to the original law.

In the case of the heirs of Colonel Harrison, where a law had been passed allowing commutation, (6 U. S. L., 437,) Attorney General Berrien held that interest was not allowable under an act allowing the principal. (2 Attorney O , p. 390.)

SECOND. *There is no general law of Congress providing for the payment of interest upon claims due from the United States, and no special law applicable to the present case.*

No general law putting claims upon interest has been cited, nor any special act referred to, which requires the payment of interest in this class of cases or on this particular claim. No such law exists.

The theory of the claimant is this: that the law of 1855, authorizing the payment to Stone's representative the invalid pension which he might have received, has the effect to convert this unclaimed pen-

sion into a debt "for supplies or services done," and therefore bearing interest. How the character of the original debt is to be thus changed is not stated. Congress does not provide for this change in the act of 1855, nor refer to the question of interest. The claimant says, in his brief, that this act of 1855 "expressly puts the case within the resolution of June 3, 1784." But he fails to prove this. Certainly the act of 1855 states nothing of the kind. All there is in that act is the direction to pay a half-pay pension claim, demanded under an invalid pension resolution passed by the old Congress on the 26th of August, 1776. This does not sustain the assumption of the claimant.

But it is insisted that "where Congress did not intend to give interest, the special acts relating to such cases provided accordingly."

For greater certainty, Congress, in one case cited by him, did forbid the payment of interest. But the legislation of Congress proves that they have acted upon no such rule as contended for. The accounting officers have almost universally refused to allow interest, except where expressly authorized by statute. They have allowed it in no case, except where they supposed they found in the particular case the expressed will of Congress in the law itself. They act upon the well-settled principle that the party who sets up a claim must show legal authority for the allowance. In the present case no such authority is shown, and none exists. Interest always arises either from a statute law or an express authorized agreement, so far as the government is concerned.

The government is presumed to be always ready to pay just claims, when lawfully demanded, upon sufficient evidence showing the claimant to be legally entitled to receive. In this case no such evidence was ever presented by the claimant to the officer authorized to act upon it. None is now presented.

Every contract entered into by the government looks to and includes as a part of it the laws and systems of doing the public business. If the claim is for a debt due for property or services rendered, by the general law the claim is to be presented to the accounting or some other authorized officer for adjudication and payment, upon suitable and proper legal evidence. If for an invalid pension, the law requires the claim thereto to be presented to the Commissioner of Pensions or other authorized officer, and to be supported by proper evidence before it can be allowed. The party has no legal right thereto until he has done so. The government is not in default until it refuses to allow the pension upon such proper evidence. Until the government is in default no interest can be claimed against it, unless there is an express agreement. This is the law between individuals. In this present case no demand has been made for a pension, upon proper evidence, and therefore the government is not in default, and not liable.

If a claim to money is proved in this court, which has not been presented, with such proof to the accounting officers, no recovery can be had, even for the principal, and much less for interest, because the government is not in default. No legal right, duly proved, has been withheld.

THIRD. *This is a stale demand, and is not allowable under the settled rulings of this court.*

The claim, if it has any real foundation to rest upon, had its origin as early as the 1st of August, 1779. Stone, it is said, died in 1804, and, so far as the record shows, never made any claim for the allowance of an invalid pension. The first we know of this claim in the record is the enactment of a law fifty-one years afterwards, authorizing the payment of the pension, which it is supposed he could have drawn, to his legal representative. Stone rested, without asking for a pension, twenty-five years, and his representative over half a century before asking or obtaining a law authorizing the payment of what has been received.

If the interest now demanded is payable at all, it is upon the ground of the original indebtedness, which had its origin, as stated, in the act of 1779, which authorized its payment. The act of 1855 does not constitute new promises, but the debtor said, "I will pay you a certain sum," and says nothing more, and then pays it. This does not revive a former liability, if any, so as to authorize the demand of a further sum, either as principal or interest.

As between individuals, it would not be claimed that such a payment would revive a liability. On the other hand, the lapse of time would be held to bar all claim under the original indebtedness.

Stale claims are never looked upon with favor, and especially where no demand is shown to have been made. There is no evidence that either Stone or his representative ever demanded the pension of the United States or the interest now claimed. It is not shown that at the time of the payment under the act of 1855 the interest now demanded was ever claimed.

At this late day no proof can be made in relation to these early transactions. Under the resolution of the 26th of August, 1776, Stone may have received all the reward for his disability, if any, that was therein offered, through the instrumentality of a State, without there being any evidence of the fact now to be found. It may be that his claim to a pension was then examined and rejected. He may have continued in the service receiving full pay, and thus not entitled to a pension. His disability may have ceased to exist. He may have been paid a pension to the day of his death. But if either of these things occurred, at this late day it is not probable that any evidence of either can be found. It is historically known that in 1814 and 1833 the mass of the treasury records were destroyed by fire. Hence, there is great hazard of a double payment in paying such old claims. The presumption is, that if there was any foundation for a claim, that it was paid, at or near the time of its origin. Claimants are usually too attentive to their own interest to indulge in delays of half or two-thirds of a centuary, without even asking for what they think themselves entitled to.

In this case there is not even the form of an excuse for these long delays and extraordinary inattention to a pension, on the part of one who, if he had any claim, must have been so disabled as to be unable to get a livelihood.

It may be said he was unable to make the proof required by the words of the resolution of 1776. If so, then the old government was not liable to him, and if it was not, then the present government is not liable. His claim rested upon the fact that he should prove it in a particular manner, and there is no law authorizing any other proof to be received. His right to a pension rested upon the condition precedent of his furnishing proof to bring himself within the law.

This is undeniably a stale claim, and no excuse is offered for its being allowed to become so. Indeed none can be made which will relieve it from this character. It must rest also under the suspicion that the claim was never a good and valid one, or that the party received under it all that he was entitled to, the evidence of which has not been preserved, or is inaccessible.

FOURTH. *The claim is barred by the statutes of Congress.*

The claimant insists that this is one of the class of claims which bears interest under the resolution of the 3d of June, 1784. If this is so, then it is for services, and was barred by the resolution of November 2, 1785, which is as follows: (Old J., 603.)

"*Resolved*, That all persons having claims for *services* performed in the military department be directed to exhibit the same for liquidation to the commissioners of army accounts, on or before the first day of August ensuing the date hereof, and that all claims under the description above mentioned, which may be exhibited after that period, shall forever thereafter be precluded from adjustment or allowance, and that the commissioner of army accounts give public notice of this resolve, in all the States, for the term of six months."

If it is for other matters, then it falls within the resolution of the 23d of July, 1787, (Old J., 762,) which is as follows:

"*Resolved*, That all persons having unliquidated claims against the United States, pertaining to the late commissary's, quartermaster's, hospital, clothier's, or marine departments, shall exhibit particular abstracts of such claims to the proper commissioner appointed to settle the accounts of those departments, within eight months from the date hereof; and all persons having *other unliquidated claims* against the United States shall exhibit a particular abstract thereof to the Comptroller of the Treasury of the United States within one year from the date hereof; and all accounts not exhibited as aforesaid shall be precluded from settlement or allowance."

Congress, by the act of the 27th of March, 1792, (1 U. S. L., 245,) suspended these acts of limitation for a period of two years.

If the above acts did not apply and cover this case, the act of Congress of the 12th of February, 1793, (1 U. S. L., 301,) did so. It provides as follows:

"That *all claims* upon the United States for *services* or *supplies*, or for *other cause, matter*, or *thing, furnished* or *done*, previous to the fourth of March, 1789, (when the old government ceased,) whether founded upon certificates, or other written documents from public officers, or *otherwise*, which have not already been barred by any act of limitation, and which shall not be presented to the treasury before the

first of May, 1794, shall forever after be barred and precluded from settlement or allowance."

This act provides for the presentation and registering claims within a certain period. But it is not shown that this was presented or registered. It also excepts from its operation loan office certificates and certain other evidences of debt, among which this class of claims is not included.

This act was intended to bar all claims, and it remains in full force. It is true it does not aply to pension certificates theretofore granted to invalids, but it was apparently intended to cover every other demand that could be made upon the treasury, and most certainly included everything that could bear interest, which was not expressly excepted in the act itself.

The claimant seems to suppose that the act of 1855, authorizing the payment of money demanded as a half-pay pension, in some way takes his cause out of the operation of the statutes above referred to. But how it is done is not shown. The act itself contains no provision tending to show that Congress had any such object in view. Before that act was passed, clearly the claimant could not have recovered anything. After it was enacted, it gave a certain amount, and provided nothing more. It contains no promise to pay, nor does it change the nature or character of the former claim. That act has performed its functions, and cannot now be resorted to for any other purpose. Consequently the statutes of limitations apply if the claim is one that ever bore interest. But if it never bore interest, then it cannot be made now to do so, and the present claim must fall to the ground.

B. H. GILLET,
Solicitor.

Dated April 26, 1860.

IN THE COURT OF CLAIMS.

November 20, 1860.

NATHANIEL P. CAUSIN, ADMINISTRATOR OF JOHN H. STONE, *vs.* THE UNITED STATES.

HUGHES, J., delivered the opinion of the court

The petitioner claims *interest* on the sum of $11,331 16, granted and paid as half pay, under the following act of Congress, and founds his claim on the terms of the act.

AN ACT for the relief of the legal representatives of Colonel John H. Stone.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and required to pay, out of any money in the treasury not otherwise appropriated, to the legal representa-

tives of Colonel John H. Stone, the half pay of a colonel in the continental line of the army of the United States; the said half pay to commence on the first day of August, seventeen hundred and seventy-nine, and to terminate on the fifth day of October, eighteen hundred and four, the day of his death. The same being then due and unpaid to the said Colonel John H. Stone, in virtue of the resolution of Congress of the twenty-sixth day of August, seventeen hundred and seventy-six, which engaged to allow half pay for life to such officers and soldiers as should lose a limb in any engagement, or be so disabled in the service of the United States of America as to render them incapable afterwards of getting a livelihood; the said pay to commence from and after the time that their pay as an officer or soldier ceased. Approved January 18, 1855. (10 Stats. at Large, p. 843.)

The petitioner has put in evidence the settlement made with him by the accounting officers in the Treasury Department, in pursuance of the above-recited law, by which there was found due and paid to him $11,331 16 This sum he received without protest or objection, making no claim for interest at the time. The date of this settlement is January 26, 1855. More than five years afterwards, viz: on the 16th day of April, 1860, the petitioner, by attorney, made a demand for interest of the Secretary of the Treasury, which was denied. This is all the evidence given in the cause.

The counsel for the claimant maintains that he need not go beyond the act of Congress to prove either that Colonel John H. Stone was rightfully entitled to half pay, under the resolutions of Congress, or that he made the proper formal application and demand therefor, and insists that the act itself renders the United States liable for interest as well as principal, because it refers to the resolution of Congress of June 3, 1784, which he contends is thereby adopted as a part of the act, and gives interest in this case.

The resolutions of Congress *of the twenty-sixth of August*, 1776, referred to in the law, are to be found in the Old Journals of Congress, vol. 1, pp. 454, 455. The parts material to the matter now under consideration are as follows:

"*Resolved*, That every commissioned officer, non-commissioned officer, and private soldier who shall lose a limb in any engagement, or be so disabled in the service of the United States of America as to render him incapable afterwards of getting a livelihood, shall receive, during his life, or the continuance of such disability, the one-half of his monthly pay, from and after the time that his pay as an officer or soldier ceases, to be paid by the committee as hereafter mentioned.

* * * * * * * *

"*Provided*, That no commissioned officer, non commissioned officer, nor private soldier in the army, commander, commission officer, warrant officer, marine, or seaman of any of the ships-of-war or armed vessels belonging to the United States of America, who shall be wounded or disabled as aforesaid, shall be entitled to his half pay or other allowance unless he produce to the committee or officer appointed to receive the same, in the State where he resides or belongs, or to the assembly or legislative body of such State, a certificate from the com-

manding officer who was in the same engagement in which he was so wounded, or, in case of his death, from some other officer of the same corps, and the surgeon that attended him, or a certificate from the commander of the ship-of-war or armed vessel engaged in the action in which any officer, marine, or seaman received his wound, and from the surgeon who attended him, of the name of the person so wounded, his office, rank, department, regiment, company, ship-of-war, or armed vessel to which he belonged, his office or rank therein, the nature of his wound, and in what action or engagement he received it.

"That it be recommended to the several assemblies or legislative bodies of the United States of America to appoint some person or persons in their respective States who shall receive and examine all such certificates as may be presented to them, and register the same in a book; and also what support is adjudged by the assembly or legislative body of their State to those whose case requires but a partial support; and also of the payment from time to time of every half pay and other allowance, and of the death of such disabled person, or ceasing of such allowance; and shall make a fair and regular report of the same quarterly to the Secretary of Congress or Board of War, where a separate record shall be kept of the same.

"That it be recommended to the assemblies or legislative bodies of the several States to cause payment to be made of all such half pay or other allowance, as shall be adjudged due to the persons aforenamed on account of the United States.

"*Provided*, That all such officers and soldiers that may be entitled to the aforesaid pension, and are found to be capable of doing guard or garrison duty, shall be formed into a corps of invalids and subject to the said duty; and all officers, marines and seamen of the navy who shall be entitled to the pension aforesaid, and shall be found capable of doing any duty on board the navy, or any department thereof, shall be liable to be so employed."

The resolution of the 3d of June, 1784, which the petitioner insists is embraced in the reference contained in the act of Congress, is as follows:

"That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished or services done, from the time that the payment became due." (Old Journal, vol. 4, p. 443.)

After a careful consideration of this case, we have come to the conclusion that the petitioner has not shown a valid and just claim upon the United States, for the following reasons:

First. The act of Congress does not allow interest nor admit any facts or acknowledge any debt to the claimant creating a liability against the United States.

Second. The resolution of the third of June, 1784, is not referred to or adopted by the act of Congress.

Third. The money paid to the petitioner under the act of Congress was, as to him, a mere gratuity. As to him, neither principal nor interest was legally due.

Fourth. It appears upon the face of the petition and from the appli-

cations made to Congress for relief, that the petitioner is not entitled under the resolutions of August 26, 1776.

Fifth. The claim is barred by the statutes of limitation.

The law on which this claim is founded consists of two clauses. The first directs the Secretary of the Treasury to pay to the legal representatives of Colonel John H. Stone "the half pay of a colonel in the continental line of the army of the United States; the said half pay to commence on the first day of August, seventeen hundred and seventy-nine, and to terminate on the fifth day of October, eighteen hundred and four, the day of his death." There is no ambiguity in this portion of the act, nor any words on which to hang a claim for interest. It specifically directs the payment of the "principal," if that word may be used with propriety here, and furnishes data whereby to compute it. Nothing is left to the accounting officer but mere arithmetic. The second clause of the act is explanatory of the first, and is intended to show for what cause the payment authorized in the first is to be made, not to enlarge or qualify its terms. "The same being then due and unpaid to the said Colonel John H. Stone, in virtue of a resolution of Congress of the twenty-sixth day of August, seventeen hundred and seventy-six, which engaged to allow half pay for life to such officers," &c. If there is any allowance of interest, or any admission of indebtedness upon which to found a claim for interest in this act, they are to be found in the words just quoted. What is here admitted to have been due and unpaid? The half pay without interest—*i. e.*, the principal. But how due? Not as a debt, the payment whereof is delayed after a demand or due ascertainment of the amount, so as to charge the debtor with interest upon it; nor a claim upon the government, so liquidated by the proper formal application and vouchers as to put the government in default by its non-payment; but due *in virtue of the resolution of Congress of the twenty-sixth day of August, seventeen hundred and seventy-six.* This is far from being an unqualified admission of such an indebtedness as renders a party liable for interest. By reference to the resolutions of Congress of August 26, 1776, which I have already given, it will be seen that some steps were required to be taken and some obligations incurred by the beneficiaries of those resolutions to bring themselves within their provisions. Certificates were to be obtained of commanding officers and surgeons; these were to be produced to the proper committee or officer appointed to examine them in the State where the invalid resided, and were to be registered in a book kept for that purpose, and again reported to Congress and a separate record kept of them. All invalids who had availed themselves of the benefits of these resolutions were liable to be enrolled and required to perform guard and garrison duty if deemed capable, and thus assumed certain obligations towards the government; and until they had duly signified their election to claim under the resolutions, and thus subjected themselves to those obligations, nothing was due in the sense of a debt demanded and withheld.

The declaration then contained in the act of Congress, and inserted only by way of recital as a reason for granting the payment of the "principal," to the effect that *all* the half pay which could ever have been claimed by Colonel Stone remained, at the day of his death, due

and unpaid *by virtue of the resolutions of* 1776, conveys no admission of such an indebtedness on the part of the United States as would carry interest, nor of any formal application or demand whatever on the part of Colonel Stone. On the contrary, it is a declaration that this money was due to Colonel Stone *sub modo* only, *i. e.*, when he brought himself within the provisions of the resolutions, and that for some defect of proof or omission to claim on his part, the money remained unpaid and equitably due, and the intervention of Congress was necessary. This would not sustain a claim for interest, for it is clear it must appear either by proof or from the construction of the act of Congress that all steps necessary to entitle him to payment were taken before interest could be claimed. No proof is offered. The act of Congress bears a different construction, and the existence of the act is evidence that the claim did not stand upon the solid foundation of an ascertained legal debt.

As to the resolution of June 3, 1784, allowing interest in certain cases, there is no good reason for supposing that it is included in or adopted by the act of Congress. The resolutions expressly referred to in the act were passed nearly eight years before that resolution. The reference to the resolutions of 1776, contained in the act, is descriptive merely, and explanatory of the cause for which the grant was made, not directory or in aid of the computation of the amount, and even if usage or construction had attached the subsequent resolution of June 3, 1784, to these, for practical purposes, it would not be necessarily included in this reference. Besides, the resolution of June 3, in terms, only allows interest "from the time that the payment became due," and the difficulty arising from the qualified manner of the admission in the act of Congress would still remain.

The counsel of the petitioner has referred to an act of Congress, passed April 29, 1816, for the relief of Elizabeth Hamilton, widow of Alexander Hamilton, (6 Stat. at Large, p. 173,) and states that in computing the amount to be paid under that act, the accounting officer of the Treasury Department applied the resolution of June, 1784, to the case, and allowed interest. It is a sufficient answer to this to say that in the case before us the Secretary of the Treasury refused to apply it, and refused to allow interest.

At the time the act of Congress on which this petition is predicated was passed, there was nothing due from the United States to *the representative* of Colonel John H. Stone.

If nothing was due to the petitioner who now prosecutes this claim in his representative capacity, then the money granted him by the act of Congress was a mere gratuity, and he cannot maintain a suit for interest.

The act of Congress declares that the half pay was "then," *i. e.*, on the 5th day of October, 1804, "due and unpaid *to the said Colonel John H. Stone,* in virtue," &c. It does not admit that any money is *now* due as a matter of right, or ever was due to *the administrator* of Colonel Stone.

If it is contended that the terms "half pay" include and carry interest, then some reason ought to appear to show that the Congress of 1776 employed them in that sense in the resolutions of August 26.

There is no more reason for such a construction than for maintaining that the word "salary" carries interest wherever it occurs in laws of the present day.

The petitioner insists that the act of January 18, A. D. 1855, is evidence that his intestate was a colonel in the continental line of the army of the United States, and was entitled to the half pay allowed by it under the resolution of Congress of the 26th day of August, A. D. 1776. Hence he attempts to deduce the conclusion that all the requisites of the latter resolution were complied with. But he himself alleges that his intestate resigned his commission on the 1st day of October, A. D. 1779; and this circumstance rendered it impracticable for him to comply in all respects with that resolution. If, under its provisions, he had been found entitled to the half pay allowed by it, but also found capable of doing guard or garrison duty, he was liable to be assigned to the corps of invalids and to be subjected to such duty. But this could not have been done, unless he had continued to hold his commission. By his resignation, all power over him in this respect was withdrawn. It is clear, then, we think, that the statement in the act of Congress of the 18th day of January, A. D. 1855, that the half pay was due to John H. Stone on the day of his death does not include in it the fact that the terms of the resolution of August 26, A. D. 1776, were complied with by him. It is true that he could not have been legally entitled to such half pay without such a compliance with the terms of that resolution. But as, from the petitioner's own statement, it is obvious that such a compliance never could have taken place, the language of the act of January 15, A. D. 1855, is not to be understood as including that fact; but, in stating that the half pay was due, nothing more was meant than simply that the circumstances of the case were such as to call for the relief therein and thereby granted. Upon referring to the history of this petitioner's case, in its progress through Congress, it will be found that it never was placed there upon the ground that the terms of the resolution of August 26, A. D. 1776, were ever complied with; but, on the contrary, that it was not even pretended that any effort to claim the half pay was ever made till the year 1803, and that the petitioner's intestate died before any material steps were taken.

Then it is clear that there is no sufficient evidence before us that the petitioner's intestate was legally entitled to the half pay under the resolution of August 26, A. D. 1776. Moreover, if he was so entitled, his claim is barred by the acts of limitation referred to by the solicitor. And as he has already received all that was granted him under the act of January 18, A. D. 1855, he is not now entitled to relief.

Judge LORING. I concur in the result of the opinion delivered.

36TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 269.

JOSEPH SAN ROMONS AND WILLIAM ARMSTRONG ADMINISTRATORS OF JAMES B. ARMSTRONG.

[To accompany Bill H. R. C. C. 105.]

DECEMBER 18, 1860.—Reported from the Court of Claims, and, together with the accompanying bill, committed to a Committee of the Whole House, and ordered to be printed.

The COURT of CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JOSEPH SAN ROMONS AND WILLIAM ARMSTRONG, ADMINISTRATORS OF JAMES B. ARMSTRONG,

vs.

THE UNITED STATES.

1. The petition of the claimants and letters of administration.
2. Contracts on which the claim is founded transmitted to the House of Representatives.
3. Depositions and other documentary evidence offered by claimants transmitted to the House of Representatives.
4. Claimants' brief.
5. United States solicitor's brief.
6. Opinion of the court on the first hearing.
7. Opinion of the court on the second hearing, allowing claimants $17,846 78.
8. Bill for the relief of claimants.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 17th day of December, A. D. 1860.

SAMUEL H. HUNTINGTON,
Chief Clerk of the Court of Claims.

To the honorable the judges of the Court of Claims of the United States:

The petition of James B. Armstrong, a resident of the State of Texas, represents to your honorable court that he has been damaged to the extent of two hundred thousand dollars by the non-performance by the government of their part of a contract entered into with him; and that the other parties interested with him in the contract at the time of its being made; and now interested, are Joseph San Romons, Pedro Llosos, Wencesla de la Vega, Manuel de la Vega, Theophile Delmos, John Young, Alexander Werbiskie, and James Grogan.

Your petitioner alleges that on the 14th day of May, 1855, the United States quartermaster, acting under orders of government, advertised for proposals for the transportation of government supplies from Brazos de Santiago to the various military posts of the Rio Grande, for the term of two years from the first of August of the said year, and that his bid, being the lowest, was accepted by Lieutenant J. P. Garesche, the officer charged with that duty, and the following contract was accordingly signed:

Articles of agreement made and entered into this fourteenth day of June, anno Domini one thousand eight hundred and fifty-five, between Lieutenant Julius P. Garesche, acting assistant quartermaster in the United States army, on the one part, and James B. Armstrong, of the county of Cameron and State of Texas, of the other part, witnesseth:

That for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said Lieutenant Julius P. Garesche, for and on behalf of the United States of America, the said James B. Armstrong, his heirs, executors, and administrators, have covenanted and agreed, and by these presents do covenant and agree as follows, viz:

First. That the said James B. Armstrong, his heirs, executors, and administrators, shall, on the application of the quartermasters, or their agents at Brazos Santiago and Fort Brown, Texas, receive on board of good and sea-worthy steamboats, and transport without delay all government stores of whatever description from Brazos Santiago to Fort Brown, and from Fort Brown to Ringgold barracks, Texas, as may be required from time to time, during the existence of this contract, by said quartermasters or their agents.

Second. It is further agreed that the said government stores shall be received at the wharf, or the ships tackles at Brazos Santiago, and at the wharf or landing at Fort Brown; and any expense for transporting said stores from the storehouses to the said wharves shall be defrayed by the United States.

Third. And it is further agreed that this contract shall go into operation on the first day of August, anno Domini one thousand eight hundred and fifty-five, and shall continue in force for two years from that date.

Fourth. And it is further agreed that the said James B. Armstrong,

his heirs, executors, and administrators, shall transport all government stores from Ringgold barracks to Fort Brown, and from Fort Brown to Brazos Santiago, in the same manner and at the same rates as from Fort Brown to Ringgold barracks, and from Brazos Santiago to Fort Brown.

Fifth. And it is further agreed that, on the condition of the fulfilment by the said James B. Armstrong, his heirs, executors, and administrators, of the foregoing provisions of this contract, the said Lieutenant Julius P. Garesche, or his successor, for and in behalf of the United States of America, shall and will, for transporting these said government stores as aforesaid, pay, or cause to be paid to the said James B. Armstrong, his heirs, executors, or administrators, at the following rates: For transporting from Brazos Santiago to Fort Brown, Texas, for each and every barrel of flour, forty cents; for each and every barrel of pork, ninety cents; for all other barrels, bundles, casks, boxes, bales, or all measurement freight, eight cents per cubic foot; for each and every bushel of corn, oats, or other grain, twelve and a half cents; for each and every bale of hay, one dollar and fifty cents; for each and every thousand feet of lumber, ten dollars; for each and every thousand shingles, one dollar and ten cents; for all "pound freight," such as iron, lead, cannon balls, shells not loaded, light field batteries, twenty-five cents per hundred pounds; for each and every six-mule wagon, such as are now in use in the quartermaster's department, including body, running-gear and tongue, seven dollars; for all soldiers and government employés, two dollars and fifty cents; for each and every horse and mule, four dollars.

For transporting from Fort Brown to Ringgold barracks, for each and every barrel of flour, one dollar; for each and every barrel of pork, one dollar and twenty cents; for all other barrels, boxes, bales, bundles, casks, or all measurement freight, twenty cents per cubic foot.

For each and every thousand feet of lumber, eighteen dollars.

For each and every thousand shingles, two dollars and fifty cents.

For each and every bushel of corn or oats, twenty-two cents.

For each and every bale of hay, two dollars and seventy-five cents.

For all pound freight, such as iron, nails, lead, cannon balls, shells not loaded, and light field batteries, sixty cents per hundred pounds.

For each and every six-mule wagon, such as are now in use in the quartermaster's department, including body, running-gear and tongue, eighteen dollars.

For all soldiers and government employés, each and every one, four dollars.

Sixth. It is further agreed that payment shall be made monthly for the stores transported under this contract; but in the event of the quartermaster being without funds, then payment to be made as soon after as funds may be received for that purpose.

Seventh. It is further agreed that should the contractors be required to receive or deliver freight or troops at any other point on the Rio Grande, between the mouth and Roma, not named in the contract, they shall be placed at the current rates prevailing at the time of shipment.

In witness whereof, the parties to this contract have hereunto affixed their hands and seals this fourteenth day of June, anno Domini one thousand eight hundred and fifty-five.

J. P. GARESCHE,
1st Lieut. 4th Artillery, A. A. Q. M.
JAMES B. ARMSTRONG.

Executed in the presence of—
J. G. BROWNE.
THO. EVANS.

Your petitioner further represents that he provided steamers, and made other arrangements necessary and proper for carrying out the contract in good faith with the government, and that such steamers were altogether of the class and character contemplated in this service, as will appear by certificates of the United States inspectors and board of underwriters.

Notwithstanding these facts, your petitioner alleges that some time before the time fixed for the commencement of the contract, and after his securities had been deemed sufficient by Lieutenant Garesche, the contract was suspended by order of General Smith, then in command on that frontier, and that an order to this effect came from the Quartermaster General's office, Washington, and that no action has been had upon the case in Congress or in any of the departments.

Your petitioner further alleges that he has at all times been ready and willing to perform his part of the contract, but has been prevented from doing so by the action of the officers of the government, and that thereby he has sustained a loss of two hundred thousand dollars.

Wherefore, your petitioner prays for such redress as your honorable court can grant him in the premises; and your petitioner will ever pray.

J. D. B. DEBOW,
Counsel for Petitioner.

DISTRICT OF COLUMBIA, *Washington County, ss:*

Personally appeared before me, a justice of the peace in and for the said county, the said J. D. B. DeBow, and made solemn oath that the statements by him made in the foregoing petition, by him subscribed, are in his belief true.

F. I. MURPHEY, *J. P.* [L. S.]

MARCH 27, 1857.

IN THE COURT OF CLAIMS.

ARMSTRONG *vs.* THE UNITED STATES.

The honorable judges of the Court of Claims having, in their opinion of the ——, decided that there was—

"*An obligation on the part of the United States to furnish all the government stores which were to be transported during that period (referring to the two years embraced in the terms of the contract with Arm-*

strong) from and to those places, (Brazos Santiago, Fort Brown, &c.,) to the petitioner, to be transported by him according to his undertaking; and that in withholding these stores from the petitioner, and causing them to be transported by others, the United States failed to perform their part of this contract.''

The petitioner, by leave of the court, has obtained from the records of the Treasury Department a statement showing the amount of government stores, &c., which were transported by other parties, within the period and between the places referred to in the opinion, which has been filed among the papers in this cause, and is contained in a report from the Third Auditor of the Treasury, dated November 20, 1858.

From this statement an aggregate has been made by himself of the amount of stores, number of persons, &c., transported, and the aggregate value of the same under the contract, which amounts to $17,372 50, and is herewith filed (V.)

In addition to the above aggregate of articles about which there was no difficulty, there were certain other articles transported, as shown in the report of the Treasury Department, the weights and measures of which, so as to compute this freight, had to be obtained by other evidence. This evidence is furnished in the certificate of Captain Coburn, herewith annexed, marked W, and is accepted by consent of parties. The aggregate of this list amounts to $1,455 22, which swells the general aggregate to $18,782 82.

The petitioner therefore prays that your honorable court will at once have judgment entered in his favor for the above amount of $———, and also for any other sum or sums in the way of damages, costs, interest, &c., which upon the evidence may seem just and right.

The petitioner also refers to the papers Y and Z, which were not on file at the original examination of the cause.

And your petitioner will ever pray.

J. B. D. DeBOW,
Attorney for Petitioner.

County Court for Probate, January Term, A. D. 1858.

THE STATE OF TEXAS, *County of Cameron:*

To all whom it may concern: Know ye, that whereas William Armstrong and Joseph San Romons have filed their petition in this court, praying for letters of administration upon the estate of James B. Armstrong, deceased, late of said county, who died intestate, and having entered into bond with approved sureties, and taken the oath required by law; now, therefore, by these presents, the said William Armstrong and Joseph San Romons are hereby authorized and fully empowered to administer the estate of the said James B. Armstrong,

deceased, with full powers for either of them to act in the absence of the other.

Given under my hand and the seal of said county, this the 25th day of January, A. D. 1858.

[L. S]

E. BASSE,
Chief Justice of Cameron County, Texas.

Attest: BUDD H. FRY,
Clerk County Court, Cameron County, Texas.

THE UNITED STATES OF AMERICA,
Eastern district of Texas, at Brownsville.

I hereby certify that at the date of the within document Elisha Basse was chief justice of the county court of Cameron county, Texas, and Budd H. Fry was clerk of said court, and that the signatures thereto attached are the genuine signatures of said Basse and Fry.

To certify which, witness my official signature and seal this 29th day of January, A. D. 1858.

[L. S.]

F. CUMMINGS,
United States Commissioner for taking affidavits, bail, &c.

Articles of agreement made and entered into this fourteenth day of June, anno Domini one thousand eight hundred and fifty-five, between Lieutenant Julius P. Garesche, acting assistant quartermaster of the United States army, on the one part, and James B. Armstrong, of the county of Cameron, and State of Texas, on the other part, witnesseth:

That for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said Lieutenant Julius P. Garesche, for and on behalf of the United States of America, the said James B. Armstrong, his heirs, executors, and administrators, have covenanted and agreed, and by these presents do covenant and agree as follows, viz:

First. That the said James B. Armstrong, his heirs, executors, and administrators, shall, on the application of the quartermasters, or their agents, at Brazos Santiago and Fort Brown, Texas, receive on board of good and sea-worthy steamboats, and transport, without delay, all government stores of whatever description, from Brazos Santiago to Fort Brown, and from Fort Brown to Ringgold barracks, Texas, as may be required from time to time, during the existence of this contract, by said quartermasters or their agents.

Second. It is further agreed that the said government stores shall be received at the wharf, or the ship's tackles, at Brazos Santiago, and at the wharf or landing at Fort Brown; and any expense for transporting said stores from the storehouses to the said wharves shall be defrayed by the United States.

Third. And it is further agreed that this contract shall go into operation on the first day of August, anno Domini one thousand eight hundred and fifty-five, and shall continue in force for two years from that date.

Fourth. And it is further agreed that the said James B. Armstrong, his heirs, executors, and administrators, shall transport all government stores from Ringgold barracks to Fort Brown, and from Fort Brown to Brazos Santiago, in the same manner and at the same rates as from Fort Brown to Ringgold barracks, and from Brazos Santiago to Fort Brown.

Fifth. And it is further agreed that, on the condition of the fulfilment by the said James B. Armstrong, his heirs, executors, or administrators, of the foregoing provisions of this contract, the said Lieutenant Julius P. Garesche, or his successor, for and in behalf of the United States of America, shall and will, for transporting these government stores as aforesaid, pay, or cause to be paid to the said James B. Armstrong, his heirs, executors, or administrators, at the following rates: For transporting from Brazos Santiago to Fort Brown, for each and every barrel of flour, *forty cents;* for each and every barrel of pork, *ninety cents;* for all other barrels, bundles, casks, boxes, bales, or all measurement freight, *eighty cents* per cubic foot; for each and every bushel of corn, oats, or other grain, *twelve and a half cents;* for each and every bale of hay, *one dollar and fifty cents*; for each and every thousand feet of lumber, *ten dollars*; for each and every thousand shingles, *one dollar and ten cents;* for all "pound freight," such as iron, nails, lead, cannon balls, shells not loaded, light field batteries, twenty-five cents per hundred pounds.

For each and every six-mule wagon, such as are now in use in the quartermaster's department, including body, running-gear and tongue, *seven dollars.*

For all soldiers and government employés, *two dollar* and *fifty cents.*

For each and every horse and mule, *four dollars.*

For transporting from Fort Brown to Ringgold barracks, for each and every barrel of flour, *one dollar;* for each and every barrel of pork, *one dollar and twenty cents;* for all other barrels, boxes, bales, bundles, casks, or all measurement freight, *twenty cents* per cubic foot.

For each and every thousand feet of lumber, *eighteen dollars.*

For each and every thousand shingles, *two dollars* and *fifty cents.*

For each and every bushel of corn or oats, *twenty-two cents.*

For each and every bale of hay, *two dollars* and *seventy-five cents.*

For all pound freight, such as iron, nails, lead, cannon balls, shells not loaded, and light field batteries, *sixty cents* per hundred pounds.

For each and every six-mule wagon, such as are now in use in the quartermaster's department, including body, running-gear, and tongue, *eighteen dollars.*

For all soldiers and government employés, each and every one, *four dollars;* for each and every horse, and for each and every mule, *six dollars.*

Sixth. It is further agreed that payment shall be made monthly for the stores transported under this contract; but in the event of the quartermaster or his agents being without funds, then payment to be made as soon after as funds may be received for that purpose.

Seventh. It is further agreed that should the contractors be required to receive or deliver freight or troops at any other point on

the Rio Grande, between the mouth and Roma, not named in the contract, they shall be paid at the current rates prevailing at the time of shipment.

In witness whereof, the parties to this contract have hereunto affixed their hands and seals this fourteenth day of June, anno Domini one thousand eight hundred and fifty-five.

J. P. GARESCHE, [L. S.]
1st Lieutenant 4th Artillery, A. A. Q. M.
JAMES B. ARMSTRONG. [L. S.]

Executed in the presence of—
J. G. BROWNE.
THO. EVANS.

SECOND COMPTROLLER'S OFFICE,
November 25, 1857.

I certify that this copy has been carefully compared with the original in this office and found to be correct.

J. MADISON CUTTS,
Comptroller.

THE STATE OF TEXAS, *County of Cameron:*

Articles of agreement made this twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-six, between James B. Armstrong, T. E. Delmas and Brother, Alexander Wiezbiski, Pedro Llosas, Manuel de la Vega, Wenceslao de la Vega, Joseph San Roman, John Young, James Groghan, and Daniel Wolf, all residents of the aforesaid county and State, as follows:

The said parties above named have agreed to become partners in the business of buying, owning, and running two certain steamboats upon the Rio Grande, and to the Brazos Santiago, known by the names of the Guadalupe and Swan, the former being of 137 $\frac{17}{95}$ tons burden, and built at West Elizabeth, Pennsylvania, in the year 1852, and the latter being 129 $\frac{55}{95}$ tons burden, and built at Jefferson, Indiana, in the year 1851, and by these presents do agree to be copartners together, their copartnership to commence on the 12th day of May of the present year, and to continue until a majority of the partners shall see fit to dissolve said partnership; and to that end and purpose the said James B. Armstrong furnishes and puts into the concern the sum of ——— dollars; T. E. Delmas & Brother, eleven hundred dollars; A. Wiezbiski, eleven hundred dollars; Pedro Llosas, eleven hundred dollars; Manuel de la Vega, five hundred and fifty dollars; Wenceslao de la Vega, five hundred and fifty dollars; Joseph San Roman, thirty-three hundred dollars; John Young, eleven hundred dollars; James Groghan, fifteen hundred dollars; and Daniel Wolf, five hundred dollars, all in cash, as the capital of said firm. All of which it is agreed is to be used and employed in common between them for the support and management of said business for their mutual benefit and advantage.

It is further agreed that the several amounts hereinbefore mentioned as capital stock, shall be, and is hereby, divided into shares of five hundred dollars each, each share entitling the owner thereof to one vote, in person or by proxy, at all of the meetings of the company; and

said stock or shares shall be transferable upon books of the company, kept for the purpose by the treasurer of said company, provided that no shareholder shall be allowed to transfer any share of said stock without the consent of the majority of the shareholders of this company.

And it is agreed by and between the said parties that they will appoint a treasurer and such other officers as may be desired, who shall be required to enter into bond for the faithful discharge of their duties, and a majority of said shareholders shall have power to remove or appoint a captain or captains for said boats; and that said stockholders shall hold regular meetings on the first Monday of every month, for the direction and tranaction of the business of the company; and the captains of the respective boats shall make monthly reports of the business of said boats to said shareholders, at their regular meetings aforesaid, and shall also forthwith make a statment of the receipts and expenditures of the said steamboats Guadalupe and Swan from the time of their arrival in the Rio Grande up to the present time. And it is further agreed that the books of the said boats shall be open to the inspection of the shareholders at all times, and that the meetings of said company shall be held in the city of Brownsville. That in the event of the receipts of said boats being insufficient to keep said boats in repair and to run the same, we hereby severally bind ourselves to contribute such amounts, in proportion to our original stock, as shall be sufficient for the aforesaid purposes.

That in case of the death of any one or more of the stockholders in this company, the business of this said company shall not be delayed, impeded, or embarrassed in consequence of such death or deaths, and that the remaining stockholders shall continue to transact the business of said company in the same manner as if no death or deaths had occurred. And it is hereby agreed between J. B. Armstrong and the other copartners herein named, that all of the profits and benefits arising from and on account of a certain contract made between him the said J. B. Armstrong and the government of the United States, on or about the —— day of ——, A. D. ——, for the conveyance and transportation of government stores, troops, munitions of war, &c., from Brazos Santiago to Rio Grande City, and other points on the Rio Grande, shall inure to the benefit of all the copartners herein named, and shall be considered as a contract of this company, the same as any other business of said company.

Witness our hands and seals, using scrawls for seals, the date and year above written.

J. B. ARMSTRONG.
T. E. DELMAS & BRO.
ALEXANDER WIEZBISKI.
PEDRO LLOSAS.
MANUEL J. DE LA VEGA.
WENCESLAO VEGA,
By JOSEPH SAN ROMAN.
JOSEPH SAN ROMAN.
JOHN YOUNG.

In the presence of—
ISREAL B. BIGELOW.
VIVIAN GARCIA.

UNITED STATES OF AMERICA, *District of Texas:*

I hereby certify that the foregoing is a true copy of the original contract.

Witness my official signature and seal at Brownsville this 3d June, [L. S.] 1857.

F. CUMMINGS,
United States Commisioner.

COURT OF CLAIMS—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

On this second day of October, 1857, before me, the undersigned authority, personally appeared John R. Butler, who, being duly sworn, deposes and says: That his profession is that of a seaman; that for more than twenty-five years, heretofore, he has in that capacity been in command of sailing and steam vessels; that for the last four years he has resided at Point Isabel, and has been and is now acting as the agent of underwriters for several companies for the port of Brazos de Santiago; that he is well acquainted with the steamboats called the "Guadalupe" and the "Swan;" that, as such agent, he was called upon to examine said boats and report upon their condition; that he attended to that duty, made a thorough and complete examination, and found said boats to be sound, safe, sea-worthy, and fully competent for the trade intended, and in which they were employed; and he hereto attaches accurate copies of the reports made by him on said examination, and declares the same to be in all respects just and true.

JNO. R. BUTLER, *Agent.*

Sworn to and subscribed before me this 2d day of October, A. D. 1857.

In testimony whereof, I hereunto set my hand and affix the seal of the United States district court for the eastern district of Texas, [L. S.] at Brownsville, the day and year aforesaid.

F. J. PARKER, *Clerk.*

Inspection of steamboat Guadalupe.

Having been called on to examine the hull of the steamboat "Guadalupe," laying at Brownsville, I repaired on board of her on the 5th instant, and, accompanied by Mr. Richard Beasely, a competent ship-carpenter, I carefully examined her hull and frame particularly.

I found that she is four years old, of a very flat model, with sharp

bow and square stern. Her frame is strong and close timbered. The floor heads at the knuckle being of sawed curved timber. Her bow is well and strongly secured with breast hooks, and chocks over the apron. She has a good bulkhead amidships, and bulkhead stanchions in each wing, running fore and aft.

Having sounded her frame at all the points in her hull, where such vessels are most likely to rot, I found her to be perfectly sound in all parts. She is provided with one $\frac{7}{8}$-inch bower chain, and one bower anchor of five cwt., with several 7 and 9 inch hawsers.

And I consider her to be a sound sea-worthy and safe boat for the trade in which she is engaged in, viz: from Brownsville to Roma, on the Rio Grande, and all intermediate places, and to the mouth of the Rio Grande, inside, and that goods on her ought to be insured at the usual rate of premium paid on other first class boats.

JNO. R. BUTLER, *Agent.*

BROWNSVILLE, *September* 6, 1856.

AGENCY OF THE BOARD OF UNDERWRITERS
OF NEW ORLEANS AND NEW YORK AT POINT ISABEL,
August 8, 1855.

RESPECTED SIR: On the 6th instant I repaired on board of the steamer Swan, recently arrived in this port, intended to run outside, between this port and the Rio Grande; and, assisted by John Bartell, a competent ship-carpenter, I carefully inspected her hull, ground-tackle, &c. I found her to be nearly five years old; of a flat, long-floored model, with square stern and two rudders, with narrow guards; her frame is strong and close-timbered, with powerful bulkheads running fore and aft amidships and in both wings, and shows no signs of weakness or having "worked" in her frame in the seaway.

After a careful inspection of all the points in her hull where vessels of her class are most likely to rot, I found her frame to be perfectly sound in all parts, with strong ceiling and four-inch bottom plank.

She is provided with two bower-chains, one of one inch and one of fifteen-sixteenths of an inch, and two bower-anchors, of about seven hundred weight each.

And I therefore consider her to be a sea-worthy and competent boat for the trade she is intended for on this coast.

Very respectfully, your obedient servant,

JNO. R. BUTLER, *Agent.*

THOMAS A. ADAMS, Esq.,
President of the Board of Underwriters of New Orleans.

STATE OF TEXAS, *County of Cameron, ss:*

Charles Caswell, of said State and county, being sworn, says: That on the 1st of August, 1855, he was clerk of the steamer Swan; that said steamer Swan arrived, under command of James B. Arm-

strong, her then captain and master, in the harbor of Brazos de Santiago on the 1st day of August, 1855, prepared to transport government supplies from said Brazos de Santiago to Ringgold barracks, on the Rio Grande; that the said steamer was staunch, and in all respects well found and provided, and well calculated for such transportation. That, upon such arrival, Captain Armstrong immediately reported to the quartermaster's agent at Brazos de Santiago, and to the quartermaster, Lieut. Garesche, at Fort Brown, of his readiness and ability to enter upon the business and duty of such transportation, agreeably to a contract for that purpose theretofore made with said Garesche, as the agent of the government for such purpose. That, notwithstanding such preparation and readiness, no transport of such supplies has, to the present time, been furnished to any of the boats of Captain Armstrong and his co-proprietors. That, shortly after the arrival of the steamer Swan as above stated, in Brazos harbor, she was followed by the steamer Guadalupe, also a good and substantial steamboat, belonging to Captain Armstrong and co-owners, and destined to aid the Swan in the said transportation, and has since remained in the vicinity, at all times prepared to be employed, whenever the agents of the government should furnish such transportation to be performed.

This affiant further says that he has been well acquainted with each of said boats for a long time previous to the said 1st of August, 1855, and the same always stood in the first class of boats of this character for *insurance risks*.

CHAS. E. CASWELL.

Sworn and subscribed before me, this 4th day of September, A. D. 1856.

[L. S.] In testimony whereof, I hereto set my hand and seal of office.

E. BUSSE, *Chief Justice,*
Cameron County, Texas.

ADMINISTRATORS OF ARMSTRONG *vs.* THE UNITED STATES.

Interrogatory to be propounded to , *clerk to*
Joseph San Roman, Brownsville, Texas.

Question. Will you furnish, for the use of the court in this case, a statement showing, under oath, the amounts required and expended in keeping up the boats for two years, in order to carry out the contract of J. B. Armstrong with the United States, the amounts received, and the actual loss to the contractors by the non-performance of the contract, if any such loss occurred?

J. D. B. DEBOW,
Counsel for Claimant.

Cross-interrogatories.

1. State also what would have been the gross amount earned by the boats had they carried full freight each trip; that is to say, had they carried as much freight as such boats are ordinarily expected to carry.

2. What was the largest amount received for any trip between Brazos and Fort Brown, and between the latter place and Ringgold barracks? and what was the average amount received per trip?

JNO. D. McPHERSON,
Deputy Solicitor for the United States.

IN THE COURT OF CLAIMS

ADMINISTRATORS OF JAMES B. ARMSTRONG, deceased, *et als.*, *vs.* THE UNITED STATES.

The deposition of Simon Celaya, taken at the request of the claimants, to be used in the investigation of the above stated claim.

Simon Celaya, being duly sworn, deposes and says to the interrogatories herein propounded as follows:

To the direct question:

I am a resident of Brownsville, Texas, and for many years have been clerk and book-keeper for Joseph San Roman, one of the claimants in said cause.

Said San Roman made advances of the money necessary to keep the steamboats "Swan" and "Guadalupe" running, and all the accounts of the said boats were presented at his counting-room. I had the charge of his books, and made the settlement of the accounts of the boats for the whole time they were run, and therefore I became fully acquainted with the amounts necessarily expended in keeping said boats running, and the amounts received by their earnings. I have no interest, direct or indirect, in the subject of inquiry, and am not related to the claimants, or either of them The amount necessarily expended to keep up the boats for two years, in order to carry out the contract of James B. Armstrong with the United States, was eighty-six thousand one hundred and forty-five dollars and twenty-four cents ($86,145 24.)

The total amounts received from the earnings of both boats, during the time of said contract, were forty-four thousand six hundred and seven dollars and sixteen cents ($44,607 16.)

It is difficult to state the exact loss to the contractors by the non-performance of the contract. From my knowledge of all the circumstances, I am fully satisfied that if the contract had been fulfilled on the part of the United States, the contractors would have made considerable money over and above the expense of running the boats. As it was, the contractors lost, in the excess of expense of keeping up the boats for the time aforesaid, over and above the receipts, the sum

of forty-one thousand five hundred and thirty-eight dollars and eight cents ($41,538 08.) If they had had the benefit of the contract they would have secured a very large portion of the private freights, and probably have obtained the entire transportation, and at the rates theretofore customary. As it was, the contract being withheld, the two lines of boats were run, the other having the government freight, and the prices of freight were greatly reduced, and a large portion of the parties transporting goods having no confidence in the permanency of this line, from which the contract had been withheld, gave their freights entirely to the other boats, and the consequence was that the boats of this line made many trips without earning enough to pay the expense of the wood used to make steam.

I am fully satisfied that if the contract had not been withheld it would have made a difference to the contractors of at least sixty-five thousand dollars, ($65,000,) and therefore I state that I deem that their loss, in consequence of the non-performance of the contract, amounted to sixty-five thousand dollars.

And in answer to the cross-interrogatories propounded by the solicitor of the United States, the said witness answers as follows:

To the first:

The gross amount that would have been earned by the boats, had they carried full freights each trip that was made, is as follows:

The "Swan," from Brazos to Fort Brown, at the reduced rate, thirty cents per barrel, thirty-eight thousand two hundred and eighty dollars ($38,280;) the "Guadalupe," from Fort Brown (Brownsville) to Ringgold barracks and Roma, at the reduced rate, which was from twenty-five cents to one dollar and twenty-five cents per barrel, fifty-six thousand two hundred and fifty dollars ($56,250.)

To the second cross-interrogatory:

The largest amount received on any one trip from Brazos Santiago to Fort Brown (Browsville) was eight hundred and twenty-two dollars ($822.)

The largest amount received on any one trip from Brownsville to Ringgold barracks and Roma was one thousand five hundred dollars ($1,500.) This latter was for two thousand barrels of freight carried, at seventy-five cents per barrel.

The average amount for each trip made in said time of two years was as follows: "Swan," sixty-six trips, average amount per trip three hundred and seventy-seven dollars and eighty-eight cents ($377 88;) "Guadalupe," forty-five trips, four hundred and thirty-four dollars and eleven cents ($434 11.)

SIMON CELAYA.

STATE OF TEXAS, *County of Cameron:*

On this 27th day of December, A. D. 1858, personally came before me Simon Celaya, the witness referred to in the annexed interrogatories, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the annexed interrogatories and cross-interrogatories were read to the witness, and his answers thereto

were written down before me in the presence of the witness, who then subscribed the deposition in my presence.

In testimony whereof, I have hereunto set my hand and seal of office, at Brownsville, in said county and State, this the 27th day of December, A. D. 1858.

[SEAL.]

JEFFERSON BARTHELOW,
Clerk of the County Court, Cameron County, Texas.

Fees of witness... $1 50
Clerk's fees..... 4 00

5 50 Paid by J. San Roman for the claimants.

JEFFERSON BARTHELOW, *Clerk.*

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

UNITED STATES OF AMERICA,
State of Texas, County of Cameron, } *ss:*

Be it known that on this 22d day of September, A. D. 1857, personally came and appeared Mifflin Kenedy, to me well known, a witness on the part of the claimant herein, who, being by me duly sworn, does depose and say: I am about forty years of age, am a practical mariner and steamboat man, and have been such many years. I am a member of the commercial and steamboat firm of M. Kenedy & Co., established at Brownsville, in this county. I know the claimant in this case, and know that he brought into this trade two steamboats, about the month of August, 1855, called the Swan and Guadalupe, and intended to transport government troops, stores, supplies, &c., between Brazos de Santiago, Fort Brown, and Ringgold barracks. I do know that such boats were in the entire control of said Armstrong and his associates during the whole two years succeeding the first of August, 1855, and ending on the first of August, 1857.

The witness further says: There is not enough private business in this trade to support two lines of steamboats. I and my co-owners represented a different line of steamboats, in this trade, to the claimant. The consequence of the introduction of the boats of the claimant into this trade was a great reduction in the price of freights upon the prices as they ranged before the claimant's boats came into the trade, and, in my judgment, the line which I and my co-owners represented, lost, in the aforesaid two years, as good as sixty thousand dollars, and I can only judge of the losses of the claimant and his associates by the state of my own business during that time. I think about one-half of the aforesaid two years the government freight was carried on the old prices, and about one-half of such term the government freight was carried upon the reduced prices.

M. KENEDY.

Sworn and subscribed before me this 21st day of September, A. D. 1857.

Witness my hand and the seal of the United States district court for the eastern district of Texas, the day and year aforesaid.

[L. S.]

F. J. PARKER,
Clerk and ex-officio U. S. Commissioner of the Court of Claims.

IN THE COURT OF CLAIMS.

J. B. ARMSTRONG and OTHERS *vs.* THE UNITED STATES.

Testimony of Robert B. Kingsbury, for claimants, taken before Edmund F. Brown, commissioner for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On the tenth and sixteenth days of March, A. D. 1858, personally came Robert B. Kingsbury, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, did attend, and did not object.

EDMUND F. BROWN,
Commissioner of the Court of Claims.

Fees of witness:	
Attendance two days, at $1 50 - - - - - - -	$3 00
Commissioner's fees:	
Taking testimony, 4 pages, say 920 words, at 20 cts. per 100	1 84
Administering oath - - - - - - - - -	10
	1 94

The deposition of Robert B. Kingsbury, taken at the request of J. D. B. De Bow, esquire, counsel for J. B. Armstrong, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of J. B. Armstrong and others vs. The United States.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim

which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Robert B. Kingsbury; my occupation, a merchant; my age is forty-five years; my residence the past year, Brownsville, Texas. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimants.

1st interrogatory by counsel for claimant. Are you acquainted with the navigation of the Rio Grande? and will you state at what season of the year the approaches to that river from the sea are most hazardous?

Answer. I am acquainted with said river, and should say that the season in which the approaches to it from the sea are most hazardous is from the first of November to the first of April.

2d interrogatory. Can you state whether or not the steamers Swan and Guadalupe, originally belonging to James B. Armstrong, are in use now upon the Rio Grande; and if in use, for what purpose, and under whose ownership?

Answer. The boats just named have been in use during the past summer, under the ownership of M. Kenedy & Company, in the transportation of freights from Brownsville to Rio Grande City.

WEDNESDAY, *March* 10, 1858.

To afford the witness time to consult counsel relative to further interrogatories, adjourned to to-morrow, at 10 o'clock.

EDMUND F. BROWN,
Commissioner.

TUESDAY, *March* 16, 1858.

The witness appeared this morning, having been detained from attending last week.

3d interrogatory. Had M. Kenedy & Co. other boats plying last summer between Brownsville and Rio Grande City, on the Rio Grande; or were there other boats plying on the Rio Grande by which freights were transported between the two above-named points?

Answer. M. Kenedy & Co. had no other boats running between Brownsville and Rio Grande for some three months of the last spring and summer, or about that length of time; I cannot designate the precise time. The steamer Ranchero, during that time, was hauled out, and the Guadalupe and Swan were the only boats carrying freight between the points above named.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know of nothing more.

ROBERT B. KINGSBURY.

Sworn to and subscribed before me.

EDMUND F. BROWN,
Commissioner of the Court of Claims.

MARCH 16, 1858.

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *et als. vs.* THE UNITED STATES.

UNITED STATES OF AMERICA, *Eastern District of Texas, to wit:*

Be it remembered, that on this 12th day of January, A. D. 1858, personally came and appeared before me, the undersigned authority, Conrad Bloom, a witness residing in the city of Brownsville, county of Cameron, State and district aforesaid, produced by and on behalf of the claimants in the above entitled cause, and who being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows:

I am a merchant of the city of Brownsville, and have been such for the last nine years. I am well acquainted with the trade and commerce of the Rio Grande valley. I know the claimants in this case. I know the steamboats "Swan" and "Guadalupe;" have known them since they were brought here in 1855 by said Armstrong; they were every way staunch and well formed, and well calculated for the transportation of troops and government supplies and stores. *They were side-wheel, high-pressure boats; none other than this class of boats has ever been engaged in this trade.*

I know that the Swan and Guadalupe were run at a great loss by said Armstrong during their employment in this trade.

I can state, on my own knowledge, that several merchants in considerable business, at different points between Brazos Santiago and Roma, previously to the arrival of said boats in the trade, had agreed to give their freight and patronage to said boats on their entering the trade, but who refused to give such patronage when they found the government contract for the transportation of troops and supplies between Brazos Santiago and Ringgold barracks had been withholden from Captain J. B. Armstrong, who brought the said boats here.

I am satisfied, from my knowledge of the trade and commerce of this valley, that had Capt. Armstrong been permitted to enjoy the contract of the government, as at first awarded to him, for the transportation of troops and supplies of the government from Brazos de Santiago to Ringgold barracks, it would have resulted in the withdrawal of the other boats, or would have so far engrossed the carrying business of the route as to have left the other boats with very little patronage. I am convinced that had Armstrong succeeded in retaining and enjoying said contract, he, and those interested with him, would have realized a large profit in the two years it was to continue, say at least one hundred thousand dollars, and I believe more, independent of the government patronage. The frontier States of Mexico bordering on the Rio Grande are supplied principally through the port of Brazos de Santiago, and the principal part of the merchandise is transported in steamboats navigating the Rio Grande to Roma. This branch of trade was particularly active during the two years succeeding the 1st of August, 1855.

M. Kenedy & Co. had but two boats in the trade, and had no other,

except, perhaps, an old storeship unused, at the mouth of the river, called the Mentoria, unserviceable and worn out.

The Guadalupe was better calculated for the up river trade from this place than her competitor of M. Kenedy & Co., the Ranchero, because the former drew less water, and therefore rendered the use of barges for lightering unnecessary.

I further state that I am entirely disinterested in the claim forming the subject-matter of this cause.

CONRAD BLOOM.

And I hereby certify that on the date hereof I was attended by said witness, Conrad Bloom, at Brownsville aforesaid, and that said witness, Conrad Bloom, being first carefully examined and cautioned, and duly sworn by me to testify the whole truth, the preceding deposition of said witness was reduced to writing in my presence and under my direction, and after being carefully read over to and approved by said witness, Conrad Bloom, he subscribed the same in my presence, as the same appears.

And I further certify that I have taken and certified said deposition at the request of Joseph San Roman, one of the claimants in said suit, the clerk of the United States court at Brownsville being absent and distant from said county.

Witness my official signature and seal, at Brownsville aforesaid, this 12th day of January, A. D. 1858.

[L. S.] F. CUMMINGS, *U. S. Commissioner for taking affidavits, bail, &c., for the Eastern District of Texas.*

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

THE UNITED STATES OF AMERICA,
District of Texas, County of Cameron, to wit:

Deposition of James Walworth, a resident of the State of Texas, in said county of Cameron, a witness on the part of the claimant herein, who being duly sworn, deposes and says: I am a practical steamboat man, and have been such for several years. I am clerk for the steamboat and commercial firm of M. Kenedy & Co., doing business on the Rio Grande, and established at Brownsville, in this county. As such clerk I have had charge of the books of said firm, embracing the extent and transactions of their steamboat business for the two years commencing on the 1st August, 1855, and ending on the 31st July, 1857.

The amount of private freights transported on the boats of said firm, on both sections of said river, from Brazos de Santiago to Fort Brown, and from Fort Brown above, including Ringgold barracks, for the said term of two years, was one hundred and forty-two thousand eight hundred and thirty dollars and sixteen cents, including about

the sum of five thousand dollars, received for the transportation of troops from Ringgold barracks and Fort Brown to Brazos Santiago in November, 1856, under a special agreement with Colonel Waite, the then commanding officer at Ringgold barracks.

That during said period of two years the amount of freight transported on the boats of said firm for account of the United States, as under pre-existing contract for the transportation of troops and army supplies, was twenty-one thousand one hundred and forty-nine dollars and sixteen cents.

Affiant further says that he is well acquainted with the nature of the business connected with the use of steamboats on said river and in the trade above mentioned, and affiant believes that any line of boats having the government contract or patronage for such transportation has a large advantage over any other boats not thus favored.

J. WALWORTH.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

Sworn to and subscribed before me this 7th day of October, A. D. 1857.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of the United States district court for the eastern district of Texas the day and year aforesaid.

F. J. PARKER, *Clerk.*

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

THE UNITED STATES OF AMERICA, } *ss:*
State of Texas, County of Cameron, }

Charles E. Caswell, a witness on the part of the claimant herein, being produced and sworn agreeably to law, says: He is twenty-nine years of age; he knows the claimant in this case; he knows the steamers "Swan" and "Guadalupe;" that he has been employed on one or the other of said boats since their arrival in the waters of the Brazos harbor and Rio Grande; has known them both for the last four years; witness says he has been master of the said steamer Swan a portion of the time since her said arrival in this vicinity; the "Swan" arrived in Brazos harbor on the evening of the first day of August, 1855, in charge of John Young as temporary master, who is a coast pilot; the "Guadalupe" arrived in Brazos harbor about the middle of the aforesaid month of August; the said steamer "Swan" was in all respects fitted and adapted to the delivery of any kind of freight at Ringgold barracks on the Rio Grande; witness has the best means of knowing the condition of said two steamers upon

their arrival here; the said "Swan" had just then been taken from the stocks at Galveston, where she had been subjected to the most thorough repairs, and was in fact as good as when new; the "Guadalupe" had also been hauled out and repaired, and was in all respects in prime sea order and condition.

The witness further says that he has acted as master of said steamer Swan for several months since her arrival in this vicinity; that the said two steamers for the two years preceding the first day of August last, were in all respects continuously in good navigating condition and amply qualified by capacity and general fitness for the transportation of government freight of all classes, including soldiers, officers, their baggage, attendants, and the like.

Witness further states, that said steamer "Swan" on several occasions made trips outside the bar, seaward, when the steamer "Grampus," on which the government freight was habitually carried, did not venture out; and on one of these occasions, in addition to having a considerable quantity of freight on board, did receive on board from a Mexican vessel at sea four hundred Mexican soldiers, their officers and baggage, arms, stores, &c., and did transport the same into the Rio Grande, and as far up as Matamoras, where they were discharged.

The witness further says that said steamers "Swan" and "Guadalupe" were within the control and command of said Armstrong and his co-proprietors and associates in the ownership of the same for the entire period of two years from and succeeding the first day of August, 1855, and ready to perform any duty or service in reference to the contract of said Armstrong with the Quartermaster's department of the United States for the transportation of government stores, including troops, &c.

The witness further says that said Armstrong was ready to give, and did offer to give, the most ample and undoubted security for the performance of said contract.

The witness states that he does not know the amount of government freights during the two years ending on the 30th day of July, 1857, nor does he know the amount of private freights transported during said period from Brazos harbor to the various navigable points on the Rio Grande as far up as Ringgold barracks; the earnings of the "Swan" between Brazos harbor and Fort Brown, on the lower section of the trade, amounted to about $40,000 for the said two years; and from the proportion of the trade enjoyed by the Swan and Guadalupe, the whole earnings of the trade over this section in said two years would amount to about $100,000, at the rates at which the business was done.

Witness says that he has no data of the trade upon the section between Fort Brown and Ringgold barracks, but at the rates at which the business was transacted, the whole earnings upon said upper section would amount to at least double the last-mentioned sum, or $200,000.

The witness further states, that, upon the arrival of the said Swan and Guadalupe into this trade, the owners of the boats theretofore and which continued in the trade, upon both sections of the route, reduced the rates of private freight more than one-half, and continued such

opposition during the whole of the said two years; and the Swan and Guadalupe, in order to share in the trade at all, had to conform to the reduced rates of doing business.

The witness further says that the rates of doing the business of the trade resulted in a large loss to the proprietors of the said Swan and Guadalupe—1st, to the whole extent of the wear and use of the boats; and, 2d, to the amount of about $30,000 excess of necessary expenditures over the receipts of the business.

The witness further states that parties having the government patronage of the transportation of stores, supplies, troops, &c., over this route, have a large advantage over others not enjoying this advantage and patronage arising from the more necessary and punctual regularity of their trips and an enhanced confidence in the community arising therefrom.

The witness further says that from his knowledge of the trade over this route, which he has known for the last eight years, he feels confident that if the said Armstrong and his associates, claimants herein, would have been left to the entire and undivided enjoyment of the trade over this route, had the contract before referred to been awarded to them or to said Armstrong.

The witness further says that he is familiar with the state of the trade upon and in reference to the route in question; that he has continuously acted as clerk of the steamer "Swan" from the time of her arrival in this trade until on or about the 27th day of May, 1857.

The witness further says that he has no interest in the matter involved in this case in any matter whatever.

CHAS. E. CASWELL.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

Sworn to and subscribed before me this 10th day of September, A. D. 1857. To certify which, I hereunto set my hand and seal [L. S.] of the United States district court, at my office in Brownsville, in said district, the day and year aforesaid.

F. J. PARKER,
Clerk of the United States District Court and ex-officio United States Commissioner of Claims.

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

Interrogatories to be proposed to Lieutenant L. O. Morris and Lieutenant L. L. Langdon, witnesses for the United States.

Were you at any time during the two years ending July 31, 1857, a quartermaster, stationed on the Rio Grande. If so, at what place, and for what period? And did you, during this last period, offer freight to be transported by the boats of James B. Armstrong? If

so, was the freight accepted or refused? If refused, what reason was assigned therefor, and in what way did you cause the freight to be transported? State all that may have occurred between you and said Armstrong, or the masters of his boats, in regard to the transportation of freight or troops for the United States while you were quartermaster as aforesaid.

JNO. D. McPHERSON,
Deputy Solicitor.

Cross-interrogatories on the part of J. B. Armstrong.

State the earliest period, if any, after the 1st of August, 1855, at which freight was offered, and (generally) the quantity offered, and also the latest period, and if the freight was offered upon the terms of a supposed contract, or upon any other terms, and what terms; and if you acted under instructions, and what instructions, and for whom; and what amount of the gross freight, if any, you would have been able to give to the said Armstrong.

Did you offer a certain description of freight, or indiscriminately freight and passage?

J. D. S. DE BOW,
Counsel for Plaintiff.

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

THE STATE OF TEXAS, *County of Cameron:*

On this 22d day of February, A. D. 1858, personally came and appeared before me, Budd H. Fry, specially commissioned by said Court of Claims, and being clerk of the county court of Cameron county, Texas, Lieutenant Lewis O. Morris, who, being by me duly and solemnly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the foregoing direct and cross-interrogatories, says:

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

Interrogatories to be proposed to Lieutenant L. O. Morris and Lieutenant L. L. Langdon, witnesses for the United States.

Were you at any time during the two years ending July 31, 1857, a quartermaster, stationed on the Rio Grande? If so, at what place, and for what period? And did you during this last period offer freight to be transported by the boats of James B. Armstrong? If so, was the freight accepted or refused? If refused, what reason was assigned therefor, and in what way did you cause the freight to be transported? State all that may have occurred between you and said

Armstrong, or the masters of his boats, in regard to the transportation of freight or troops for the United States while you were quartermaster as aforesaid?

JOHN D. McPHERSON,
Deputy Solicitor.

Answer. I was acting assistant quartermaster of the United States army at Fort Brown, Texas, from the 18th day of November, 1856, to the 8th day of May, 1857, and during that time freight was offered for transportation to the boats of James B. Armstrong, and was accepted. On or about the 20th of November *one* of the boats transported troops and baggage from Brownsville to Ringgold Barracks, and on or about December 10, 1856, one of these boats transported forage from Brazos Santiago to Fort Brown. This freight was taken at the current rates, and not on the terms of a supposed contract. The master of the steamer Swan told my agent at Brazos Santiago that they had refused to carry freight for government unless the whole amount was given, according to the contract made with Lieutenant Garesché, as it might invalidate their claim for damages against government; but now they had concluded, as they were common carriers, to carry government freight.

On the part of J. B. Armstrong.

State the earliest period, if any, after the 1st of August, 1855, at which freight was offered, and (generally) the quantity offered, and also the latest period, and if the freight was offered upon the terms of a supposed contract, or upon any other terms, and what terms; and if you acted under instructions, and what instructions, and for whom; and what amount of the gross freight, if any, you would have been able to give to the said Armstrong.

Did you offer a certain description of freight, or indiscriminately freight and passage?

J. D. S. DE BOW,
Counsel for Plaintiff.

Answer. I cannot state the earliest period after the 1st of August, 1855, at which freight was offered to the boats of James B. Armstrong. Lieutenant O. F. Solomon, 4th artillery, whom I relieved in the duties of acting assistant quartermaster at Fort Brown, Texas, reported to me that he had offered one-half of the government transportation to those boats, and the agent had refused to transport the same. He would take the whole freight on the terms of a contract made with Lieutenant Garesché, but not a portion of it. The earliest period at which freight was offered to those boats while I was acting assistant quartermaster at Fort Brown was on or about the 20th of November, 1856, and the latest was on the 10th day of December. At the first date an officer, twenty-four soldiers, and two laundresses were transported from Brownsville to Ringgold barracks, and at the last date two thousand bushels of oats and fifteen bales of hay were transported from Brazos de Santiago to Fort Brown. This transport-

ation was paid for at the usual rates, and not on the terms of the contract made with Lieutenant Garesché. I had no instructions in regard to transportation of stores; but had the agent of Armstrong's boats accepted Lieutenant O. F. Solomon's offer of half the freight, I should have given the freight to the amount of eighteen hundred and forty dollars and fifty-seven cents, this being half the amount I paid for the transportation of stores, &c., during the period I was acting assistant quartermaster at Fort Brown, Texas. I have no interest whatever in the result of the claim for damages in this case.

LEWIS O. MORRIS,
1st Lieut. 1st Artillery.

Sworn to and subscribed before me the day and date before written.

THE STATE OF TEXAS, *County of Cameron:*

On this 22d day of February, 1858, personally came Lieutenant Lewis O. Morris, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner, and read over to the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Lieutenant Lewis O. Morris, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of James B. Armstrong.

In testimony of which, I have hereunto set my hand and seal of office as clerk of the county court of Cameron county, at Brownsville, the day and date before written. [L. S.]

BUDD H. FRY,
Com'r and Clerk County Court of Cameron Co., Texas.

IN THE COURT OF CLAIMS.—No. 965.

JAMES B ARMSTRONG *vs.* THE UNITED STATES.

THE STATE OF TEXAS, *County of Cameron:*

On this 27th day of February, 1858, personally came and appeared before me, Budd H. Fry, specially commissioned by said Court of Claims, and being clerk of the county court of Cameron county, Texas, Lieutenant Loomis L. Langdon, who, being by me duly and solemnly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the foregoing direct and cross-interrogatories, says:

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

Interrogatories to be proposed to Lieutenant Loomis L. Langdon, witness for the United States.

Were you at any time during the two years ending July 31, 1857, a quartermaster, stationed on the Rio Grande? If so, at what place, and for what period, and did you during this last period offer freight to be transported by the boats of James B. Armstrong? If so, was the freight accepted or refused? If refused, what reason was assigned therefor, and in what way did you cause the freight to be transported? State all that may have occurred between you and said Armstrong, or the masters of his boats, in regard to the transportation of freight or troops for the United States while you were quartermaster as aforesaid.

JOHN D. McPHERSON,
Deputy Solicitor.

Answer. I was acting assistant quartermaster at Fort Brown, Texas, from about the 8th of May, 1857, to the 10th of July, 1857. During that period I did not offer freight to be transported by the boats of James B. Armstrong & Co. I caused the government freight to be transported by the boats of M. Kennedy & Co. When I entered upon the duties of my office I found the boats of Kennedy & Co. carrying the freight, and (as I understood) the freight had been offered to Armstrong's boats, and refused for that reason. I made the change in the manner of transporting the government stores. Nothing ever occurred between me and Armstrong or the owners or officers of Armstrong's boats—that is to say, officially. I was relieved in the duties of quartermaster on the 15th of July, 1858.

Cross-interrogatories on the part of J. B. Armstrong.

State the earliest period, if any, after the 1st of August, 1855, at which freight was offered, and (generally) the quantity offered, and also the latest period, and if the freight was offered upon the terms of a supposed contract, or upon any other terms, and what terms; and if you acted under instructions, and what instructions, and for whom; and what amount of the gross freight, if any, you would have been able to give to the said Armstrong.

Did you offer a certain description of freight, or indiscriminately freight and passage?

J. D. S. DE BOW,
Counsel for Plaintiff.

Answer. There was, I understood, a letter of instructions from General Jesup. What those instructions were I cannot say. I never saw the paper. The only method by which I can arrive at the amount of freight I might have offered Armstrong & Co. is by an examina-

tion of my cash papers for the period during which I served as quartermaster. By reference to those papers I find that from the 8th day of May to the 10th day of July the amount paid Kennedy & Co., who did transport all the freight, was one thousand four hundred and fifty-five dollars and eighty-eight cents, ($1,455 88.) Six hundred dollars of this sum was owing to them on the 10th day of July, but the debt was incurred prior to that date.

I am not in any way interested in the result of this suit for damages.

I did not offer both freight and passage to Armstrong's boats. Neither myself nor my agent at Brazos Santiago offered either freight or passage to those boats at any time while I was quartermaster.

LOOMIS L. LANGDON,
2d Lieutenant 1st Artillery.

Sworn to and subscribed before me.

THE STATE OF TEXAS, *County of Cameron:*

On this 27th day of February, A. D. 1858, personally came Lieutenant Loomis L. Langdon, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by me, and then proposed by me to the witness; and the answers thereto were written down by me in presence of the witness, who then subscribed the deposition in my presence. The deposition of Lieutenant Loomis L. Langdon, taken at the request of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of James B. Armstrong.

In testimony of which, I have hereunto set my hand and seal of office as clerk of the county court of Cameron county, at Brownsville, the day and date before written. [L. S.]

BUDD H. FRY,
Com'r and Clerk County Court of Cameron Co., Texas.

IN THE COURT OF CLAIMS.—No. 965.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

Interrogatories to be proposed to Lieutenants O. F. Solomon and W. G. Gill, witnesses for the United States.

Interrogatory 1. Were you at any time a quartermaster at Fort Brown or elsewhere on the Rio Grande? If yea, at what place, and for what period? and did you at any time during that period offer freight to be transported by the boats of James B. Armstrong? If so, was the freight accepted or refused? If refused, what reason was assigned therefor, and in what way did you cause said freight to be

transported? State all that may have occurred between you and said Armstrong, or the masters of said boats in regard to the transportation of freight or troops for the United States, after the 1st of August, 1855, and before the 1st of August, 1857.

JOHN D. McPHERSON,
Deputy Collector.

Cross-interrogatories on the part of J. B. Armstrong.

State the earliest period, if any, after the 1st of August, 1855, at which freight was offered, and the quantity offered, (generally,) and also the latest period, and if the freight was offered upon the terms of a supposed contract or upon any other terms, and what terms; and if you acted under instructions, and what instructions, and from whom; and what amount of the gross freight, if any, you would have been able to give to the said Armstrong?

Did you offer a certain description of freight, or indiscriminately freight or passage?

J. D. S. DE BOW,
Counsel for Plaintiff.

Additional interrogatories by claimant's counsel.

Interrogatory 1. Were you one of the board of engineers of the boats of J. B. Armstrong?

Interrogatory 2. To what other boats than those of Armstrong did you offer freight, and did they take it, and in what manner were the terms agreed upon, and how many of the boats were they, and under whose control?

Interrogatory 3. What proportion of the whole government freight on the Rio Grande was transported in steamers between the Brazos and the mouth of the Rio Grande, and what proportion was lightered outside by steamers, and had such steamers side wheels or not?

Interrogatory 4. During what portion of the year, if any, were barges required upon the Rio Grande for the government service, and were such obtainable when wanted, and from whom, and was there any additional freight paid by the government when resorted to?

J. D. S. DE BOW.

Lieutenant William G. Gill, having by me been duly sworn according to law, deposes in manner as follows, to wit:

Answer to interrogatory 1. I was acting assistant quartermaster at Fort Brown, on the Brazos Santiago, for six months—November and December, 1855; January, February, March, and April, 1856. Did not, during any time in the foregoing period specified, offer freight to be transported by J. B. Armstrong.

To cross-interrogatories. Made no arrangements at all with J. B. Armstrong for freight.

Additional interrogatories.

Interrogatory 1. There was a board of officers constituted at Fort Brown to examine the boats of J. B. Armstrong, and I was one of that board.

Interrogatory 2. Boats belonging to a firm composed of ——— Kennedy and ——— King & Co. carried all the quartermaster's freight that was given to the boats during the time I was acting assistant quartermaster. To my knowledge, made no arrangements with the firm above in regard to the terms upon which they were to carry the same, but simply delivered it to them in pursuance with a former order at Fort Brown to that effect. In my own knowledge, there were but two boats engaged in the transportation during the time I was acting assistant quartermaster, although Kennedy, King & Co. had three boats—the Grampus, commanded by Captain Kennedy usually; the Ranchero, commanded by Captain King; the other was the Mentoria, which was laid up during the time I was there, to the best of my knowledge.

Interrogatory 3. While I was acting assistant quartermaster, to the best of my recollection, there was no government freight lightered outside by steamers. I believe all the government freight on the Rio Grande was transported in steamers between the Brazos and the mouth of the Rio Grande.

Interrogatory 4. Not knowing of any barges either being required or used as inquired in this interrogatory, I can state nothing about them.

W. G. GILL,
First Lieutenant 4th Artillery.

Lieutenant O. F. Solomon, having been duly sworn, deposeth and says, in answer to interrogatory 1:

Was at Fort Brown and Brazos Stantiago acting assistant quartermaster during the month of October, 1855; May, June, July, August, September, October, and a portion of November, 1856. Did, during the foregoing period specified, offer freight to be transported by the boats of J. B. Armstrong. The freight was refused. The reason assigned for the refusal was, that the contract for the transportation of government stores properly belonged to that line, (that is, J. B. Armstrong's line,) and it would not take a portion of it only; would take no government freight unless it could carry all; caused the freight to be transported by the line ostensibly belonging to Kennedy, King & Co. I offered, as above stated, to Mr. San Roman, the ostensible agent of J. B. Armstrong's line, freight to be transported, when he refused it, for the reason that unless the line could carry all the government freight it would carry none. This was in the year 1856—what month it was I do not know. I was then compelled to employ the line of boats belonging to Kennedy, King & Co. The latter part of October or in November, 1856, Kennedy, King & Co.'s line were transporting freight and soldiers from Fort Brown to the Brazos,

when Captain Forest, of the Guadalupe, complained to me that J. B. Armstrong's line had not had a chance of competing for the transportation of this freight to the Brazos. This was after the contract had been entered into with Kennedy, King & Co. My answer was, that as Mr. San Roman had informed me that the line (that is, J. B. Armstrong's) declined carrying any government freight unless it could carry the whole amount, I had considered it out of the field for competition. Mr. San Roman refused to carry freight on the terms above stated, in presence of my clerk, Mr. Benjamin Moses.

Cross-interrogatories.

The only time I offered freight was, as I have before testified, in the year 1856, when Mr. San Roman, on the part of the line, refused the same; cannot now say what quantity was offered (generally;) the freight was not offered upon any terms having any relation to any supposed contract, but at the rates for which the line carried for private individuals. I acted under instructions to give one-half the freight to Kennedy, King & Co.'s line; the other half to J. B. Armstrong's line. The instructions were from the quartermaster general. Cannot say what amount of the gross freight I would have been able to give to the said Armstrong; offered, indiscriminately, freight and passage.

Additional interrogatories by claimant's counsel.

Interrogatory 1. Was not one of the board of engineers of the boats of J. B. Armstrong, nor on any board for the inspection of the boats.

Interrogatory 2. To the boats of Kennedy, King & Co.'s line I offered freight, and they took it. To the best of my recollection, they transported according to the terms of an expired contract, made by them and the quartermaster's department, and, at a later period, according to their usual freight rates. There were three boats belonging to that line, under the control of Captains King, Kennedy, and Mr. Douglas.

Interrogatory 3. To the best of my knowledge, the whole proportion of the government freight was transported in steamers between the Brazos and the mouth of the Rio Grande. I do not remember the amount that was lightered outside by a steamer having side wheels.

Interrogatory 4. To the best of my knowledge, there were no barges during the year required. They were obtainable from government, who owned several there.

OWEN F. SOLOMON,
First Lieutenant 4th Artillery.

Costs.

Marshal's costs:	Service of subpœna - - - - -	$1 00
	Travel, 7 miles - - - - -	35
Witnesses' fees - - - - - -		2 00
Travel, 14 miles - - - - - -		70
Commissioner's fees - - - - - -		3 00
		7 05

WM. PERRY, *Commissioner.*

TERRITORY OF KANSAS, *County of Leavenworth, ss:*

On this 16th day of February, A. D. 1858, personally came Lieutenants O. F. Solomon and W. G. Gill, United States army, the witnesses within named, and after having been sworn to tell the truth, the whole truth, and nothing but the truth, the interrogatories, cross-interrogatories, and additional interrogatories, hereunto annexed, were proposed by the commissioner to each witness separately, and the answers thereto were written down by the commissioner in the presence of the witnesses, who then subscribed the deposition in the presence of the commissioner.

The depositions of Lieutenants O. F. Solomon and W. G. Gill, United States army, taken on the part of the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of James B. Armstrong, who, by cross-interrogatories, waived notice.

[L. S.] WILLIAM PERRY,
Clerk of the Board of County Commissioners and ex-officio Commissioner for the Court of Claims.

IN THE COURT OF CLAIMS.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

On this 24th day of December, A. D. 1857, personally came Captain J. P. Garesché, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The within deposition was taken at the request of claimant, to be used in the investigation of his claim now pending in the Court of Claims.

The adverse party was notified, did not attend, but waived objection to the within interrogatories.

EDM. F. BROWN,
Commissioner.

Fees of witness.

Captain J. P. Garesché, attendance 1 day - - -	$1 50
Commissioner's fees - - - - -	3 70
	5 20

The deposition of Captain J. P. Garesché, taken at the request of James B. Armstrong, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of James B. Montgomery.

1st general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Julius P. Garesché; my occupation, assistant adjutant general United States army; my residence the past year, Washington city; my age is thirty-six years; I have no interest, direct nor indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

1st interrogatory by claimant. Did you, in the year 1855, enter into a contract with James B. Armstrong, of Texas, for the transportation of troops, &c., upon the Rio Grande? and if yes, state the authority under which you acted. Was such contract made after proposals or advertisement issued and bids received? and if so, furnish a copy of said proposals or advertisement.

Answer. As acting assistant quartermaster of the United States army for Fort Brown and Brazos Santiago, Texas, I did, on June 13, 1855, on behalf of the United States, and by special authority received from the quartermaster general in a letter dated March 10, 1855, enter into a contract with J. B. Armstrong, of Brownsville, Texas, for the transportation of the troops, stores, supplies, &c., of the United States on the Rio Grande for the period of two years next ensuing after the 1st of August, 1855, and inclusive of that day. This was after advertisement duly made by me from the 9th of April to the 1st of June, 1855, in the newspapers of Brownsville and Galveston, Texas, and New Orleans, Louisiana, inviting proposals for said transportation, and after having received two bids for the same—one from M. Kennedy & Co., of Brownsville, Texas, and the other—being the lowest responsible bid—from J. B. Armstrong, aforesaid.

2d interrogatory. Did you at any time ask from the said Armstrong bonds for the performance of his contract, and at what time, if any; and were such offered, and of what character, in your judgment and knowledge?

Answer. I did not exact a bond, as security for the performance of his contract, from the said Armstrong, for the reason *that none had been required of the former contractors, M. Kennedy & Co.*, and that I was only directed to require one late in the day preceding that on which I was directed to suspend the contract with him. I had, however, given public notice, and had moreover specially notified the said Armstrong, that such security must be furnished should the quartermaster general require it; and thereupon the said Armstrong promised to furnish it, and named as his securities Messrs. Grogan and San Roman, of Brownsville, Texas, who were, in my judgment, and

to the best of my knowledge, two of the most reliable and substantial merchants on that frontier.

3d interrogatory. Was it customary to require bonds from other contractors doing similar service, and were such furnished invariably by them?

Answer. My answer to the preceding interrogatory will answer this.

4th interrogatory. Were there any parties, to your knowledge, connected with the said J. B. Armstrong in his contract; and what were their characters for solvency, and their general reputation; and how, in these particulars, do they compare with those interested with other boats carrying government freight?

Answer. There were several other parties interested with the said J. B. Armstrong, and who were to furnish him means for the fulfilment of his contract. Their character for solvency and their general reputation were good—at least, I never heard of either being impeached. They, in my opinion, compared favorably with those interested in other boats carrying freight for the government.

5th interrogatory. Was this contract with Armstrong suspended; and if so, under whose orders, and at what time? And before such suspension had said Armstrong purchased boats for executing the contract; and what boats? And were his boats in time to perform the duty; and if of the right description, how did they compare as sea boats and river boats with those of other lines?

Answer. The contract with Armstrong was suspended, in virtue of orders dated July 15, 1855, and received by me on July 24, 1855, from Brevet Major W. W. Chapman, then chief assistant quartermaster in the department of Texas, and which were issued in the name and by the authority of Brevet Major General Persifer F. Smith, then commanding the Department of Texas. I had already been notified by Captain Armstrong, under date of Galveston, July 21, 1855, that he was provided with two suitable boats, (the same which he afterwards brought down,) and that he would leave Galveston with them on the 27th of July, 1855, at night. With one of these boats—the "Swan," which was to be the sea boat—he did arrive in full time to enter upon the performance of his contract; and this, notwithstanding that I had already notified him of the suspension of the contract. His other boat—the "Guadalupe," which was to be his river boat—was detained some time, in consequence, as I think I understood at the time, of some accident she met with, the effect of heavy weather, after she had put out to sea. These boats were of the right description, and were pronounced by good judges to be good and suitable boats, comparing favorably with those of the other line; and so long as I remained in the country (which was until some time about December 15, 1855) they ran continuously, and, so far as I have been informed, to the entire satisfaction of those in whose opinion I most confided.

6th interrogatory. After making the contract with Armstrong, had you any cause to think there might be delays on his part; and what cause? And had you reason afterwards to think otherwise, or not?

Answer. The only reasons I had for apprehending any delay on Armstrong's part were: 1st. That I had myself occasioned him a

delay of thirteen days, from the first to the thirteenth of June; which time I had taken to inquire into and satisfy myself thoroughly as to his capability of carrying out the contract, and as to the extent of credit and capital which he could rely on to sustain him in his enterprise. 2d. That I considered the time allotted by the quartermaster general, viz: from June 1, 1855, to August 1, 1855, as too short to give any contractor, except such as might, with their boats, *be on the spot*, a fair opportunity of procuring suitable boats elsewhere and bringing them down the Gulf to the Brazos Santiago.

7th interrogatory. State whether, after the 1st of August, 1855, you gave any freight to Armstrong's boats; if yes, how much, when, and for what reason?

Answer. From the 1st of August I only continued on duty as acting assistant quartermaster to September 30, 1855; at which date I was relieved from that duty by order of General P. F. Smith, with a reprimand for having communicated to Captain Armstrong a copy of Major Chapman's letter of July 15, 1855. During those two months I conformed strictly to the orders I had received in that letter to employ the boats of M. Kennedy & Co. And thus it happened, except on one occasion, when compelled to it by reason of the other boats happening to be out of the way, I never did employ either of Armstrong's boats; but this, however, for the sole reason that I considered myself as prohibited from so doing.

2d general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? if so, state it.

Answer. I cannot now recollect anything which has a direct relation to it, to which I could testify of my own knowledge.

J. P. GARESCHÉ.

Sworn to and subscribed this 24th day of December, A. D. 1857, before me.

EDM. F. BROWN,
Commissioner of Court of Claims.

A statement showing, for the two years from August 1, 1855, to August 1, 1857, in detail, all the freight, munitions, and troops transported upon the Rio Grande from any point whatever to any point whatever on that river, in Texas, as shown by the accounts to the quartermasters stationed at the different military posts on the Rio Grande between the dates designated.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
			From Brazos Santiago to Fort Brown.
Lieut. J. F. Garesché, paid 3d quarter 1855	Fort Brown	Aug. 7, 1855	7 boxes mosquito bars. } 55 ft. 5 in. 2 boxes scythes and stones. }
			1,234 pounds ammunition.
		Aug. 21, 1855	$15,000 in specie.
			1,500 bushels of oats.
			4 boxes company property, 9 ft. 5 in.
		Sept., 1855	11 barrels beans. } 88 ft. 3 boxes of sugar. }
			1,300 bushels oats.
			1 soldier.
			2,265½ bushels oats.
			67 boxes bacon. } 20 boxes candles. } 511 ft. 28 boxes soap. }
			250 barrels flour.
			30 barrels pork.
			4 iron pots, 120 pounds.
			1 box stationery, 4 ft. 4 in.
			5 barrels of rice. } 6 barrels of coffee } 216 feet. 20 barrels of sugar. } 3 barrels of hams. }
			41 boxes medical stores, 104 ft. 6 in.
			5 boxes sugar, 30 feet.

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. J. P. Gareschè, paid 3d quarter 1855	Fort Brown.....	Sept., 1855	16 tierces hams. 66 boxes sugar. 45 sets tent poles. } 787 ft. 4 in. 14 tierces clothing. 27 boxes clothing. 18 sets tent poles. } 414 ft.
Lieut. O. F. Solomon, paid 4th quarter 1856	Fort Brown.....	Oct., 1855	15 boxes tents. 4 sets tent poles. } 149 ft. 8 in. 5 boxes tools, 51 ft. 1 barrel of chalk and glue, &c. 2 boxes axes. 1 keg of tallow, 3 feet. 12 kegs nails. 2 bundles of forks. 1 smith's bellows. 7 bundles mule collars. 4 bundles buckets. } 37 ft. 3 boxes glass, 3 ft.
		Nov., 1855	1 smith's vice. 1 grindstone. 2 anvils. 1 bundle cast steel. 4 bundles iron. 17 bars iron. } 1,822 pounds. 2,000 bushels oats. 3 boxes horseshoes, 737 pounds. 1 box tools. 1 box merchandise. } 22 ft. 4 in. 90 barrels pork. 3 barrels hams. 377 barrels flour.

				113 barrels bread.
				15 barrels rice.
				28 barrels coffee.
				35 barrels sugar, brown.
				2 barrels sugar, crushed.
				23 barrels salt.
				34 barrels beans.
				74 boxes bacon.
				34 boxes candles.
				36 boxes soap.
				39 half barrels vinegar.
				13 half barrels molasses.
				20 kegs pickles.
				6 boxes clothing. } 162 ft. 2 in.
				7 tierces clothing. }
				1 box medical stores, 1 ft. 8 in.
				3 soldiers.
				25 boxes. } 101 ft. 8 in.
				1 keg. }
				1 tierce clothing. }
				9 boxes clothing. } 79 ft. 9 in.
				4 sets tent poles. }
				12 boxes company property. } 151 ft. 11 in.
				4 tierces company property. }
				11 boxes merchandise. } 90 ft 7 in.
				3 tent poles, sets of. }
				1 iron pot, 30½ pounds.
		Dec.,	1855	10 hogsheads coal.
				5 bundles paulins, 53 ft.
				70 pieces boards, 1,514 feet.
				17 pieces boards, 404 ft.
				1 box screws, 0 ft. 8 in.
				8 bundles buckets, 56 ft.
				$20,000, specie.
				1 box merchandise, 2 ft. 4 in.
		Jan.,	1856	1 box clothing, 3 ft. 5 in.
				1 grindstone.
Lieut. L. O. Morris, paid 4th quarter 1856	Fort Brown	Feb.,	1856	1,800 bushels of oats.
				4 bundles of sacks.

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. L. O. Morris, paid 4th quarter 1856.....	Fort Brown.....	Feb., 1856	3 kegs molasses.
			2 boxes clothing. } 29 ft. 4 in.
			3 bales clothing. }
		March, 1856	1 package blankets.
			2,000 bushels of oats.
			1 box medical stores. } 30 ft.
			3 barrels subsistence stores. }
		April, 1856	24 boxes horse equipments, 384 ft. 7 in.
			4,000 bushels of oats.
			1 box stationery, 3 ft.
		Dec., 1856	2,000 bushels of oats.
			15 bales of hay.
Lieut. L. O. Morris, paid 1st quarter 1857.....	Fort Brown.....	May, 1856	3 bales of rope.
			16 boxes harness.
			1 box wagon covers. } 216 ft.
			2 boxes felloes.
			1 box webbing.
			12 sets wagon bows.
			20 ridge poles.
			50 tent poles.
			40 wagon hounds.
			12 boxes horse medicines. } 60 ft.
			2 kegs horse medicines. }
			3,800 bushels of oats.
			10 barrels of coal.
		June, 1856	75 barrels of flour.
			1 barrel crushed sugar.
			2 barrels crout.
			2 barrels onions.
			5 barrels potatoes.
		July, 1856	12 wagon hubs.

			12 wagon tongues.
			60 wagon-wheel boxes.
			1 box merchandise, 0 ft. 8 in.
			500 feet lumber.
			4 casks of coal.
			5 bundles of stores.
			2 bundles leather.
	Sept.,	1856	2 boxes merchandise. } 12 ft. 2 in.
			2 boxes merchandise. }
			14 boxes medical stores, 68 ft. 11 in.
			80 barrels flour.
			2 barrels rice.
			7½ barrels coffee.
			9 barrels sugar.
			9 boxes soap.
			150 barrels flour.
			60 barrels flour.
			1 barrel rice.
			2 barrels sugar.
			2 barrels dried apples.
			130 barrels flour.
			3 barrels rice.
			8 kegs pickles.
			3 barrels dried apples.
			1 box stationery, 2 ft.
			1 box medical stores.
	Oct.,	1856	2 barrels dried apples.
			31 boxes bacon.
			20 boxes candles.
			28 boxes soap.
			24 kegs vinegar.
			6 kegs pickles.
			30 boxes bedsteads, 750 ft.
			37 boxes medical stores, 126 ft.
			1, 621 bushels of oats.
			140 barrels pork.
			2 barrels hams.
			130 barrels flour.
			76 barrels bread.

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. L. O. Morris, paid 1st quarter 1857	Fort Brown.....	October, 1856	3 barrels beans.
			12 barrels coffee.
			5 barrels brown sugar.
			1 barrel crushed sugar.
			11 barrels salt.
		Nov., 1856	1 bundle whips.
			1 box cans.
			1 box hardware
			1 box instruments.
			7 bales clothing. } 101 ft. 9 in.
			8 boxes clothing. }
			1 box scales.
			2,000 bushels oats.
		Dec., 1856	3 barrels rice.
			2 half barrels rice.
			4 shovels and 2 chisels.
			4 spades and 2 cans.
			2 axes and 2 saws.
		January, 1857	4 barrels brown sugar.
			1 barrel crushed sugar.
			12 barrels bread.
			2 barrels rice.
		Feb., 1857	2 boxes and 1 bale.
			6 barrels bread.
			84 barrels flour.
			6 barrels rice.
			2 barrels coffee.
			12 barrels brown sugar.
			2 barrels crushed sugar.
			10 boxes candles.
			6 boxes soap.

				5 kegs of vinegar.	
				1,800 bushels oats.	
				1 box blankets, 4 ft. 3 in.	
				13,000 dollars specie.	
				2 barrels rice.	
				8 boxes candles.	
				1 box company property.	
				6 office chairs.	
Lieut. L. O. Morris, paid 2d quarter 1857	Fort Brown.....	Nov.,	1856	2 companies 1st artillery.	
				12 soldiers 2d cavalry, with baggage and all other property, munitions, &c.	
		March,	1857	15 barrels pork.	
				9 barrels bread.	
				42 barrels flour.	
				2 barrels rice.	495 feet.
				2 barrels coffee.	
				4 barrels brown sugar.	
				1 barrel crushed sugar.	
				3 barrels salt.	
				1 tierce bacon.	
				5 boxes candles.	
				6 boxes soap.	
				5 kegs vinegar.	
				80 barrels flour.	
				2 barrels rice.	557 ft. 6 in.
				4 barrels coffee.	
				13 barrels brown sugar.	
				3 barrels crushed sugar.	
				1 keg pickles.	
				1 keg rice.	
				5 kegs vinegar.	
				10 boxes candles.	
				9 boxes soap.	
				1 box blankets, 5 ft.	
				20 bales hay.	
				25 planks, 677 ft.	
				2 bundles iron, 112 pounds.	
				1 blank book.	
				7 boxes medical stores, 21 ft.	

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. L. O. Morris, 2d quarter 1857	Fort Brown	March, 1857	1 box company property, 4 ft. 9 in.
		April, 1857	18 bales clothing. 18 boxes clothing. 11 sets tent poles. } 257 ft. 6 in.
			1 box company property, 1 ft. 3 in.
			1 cart and harness.
			11 pieces lumber, 350 ft.
Capt. P. T. Turnley, 2d quarter 1857	Fort Brown	June, 1857	53 bales clothing. 51 boxes clothing. 3 iron pots. 41 sets tent poles. } 825 ft.
			3 barrels dried apples.
			110 pieces lumber, 1,718 ft.
			2,000 shingles.
			From Fort Brown to Brazos Santiago.
Lieut. J. P. Garesché, 3d quarter 1855	Fort Brown	August, 1855	975 pounds nails and spikes.
			1 can of oil.
			7 barrels subsistence stores. 1 keg subsistence stores. } 58 ft.
		Sept., 1855	2 soldiers.
			2 bales blankets, 12 ft.
			1 horse and 1 employé.
			25 logs, palmetto.
			3 soldiers.
			25 logs lumber.
Lieut. O. F. Solomon, 4th quarter 1856	Fort Brown	October, 1856	2 kegs spikes, 300 pounds.
			1 box hinges, 165 pounds.
			1 roll stovepipe.
			1 demijohn, oil.

			1 barrel subsistence stores.
		Nov., 1856	2 barrels subsistence stores.
			2 cans of oil.
			1 box merchandise.
			1 bag merchandise.
		Dec., 1856	2 barrels merchandise.
			1 box merchandise.
Lieut. L. O. Morris, 1st quarter 1857	Fort Brown	October, 1856	1 soldier.
		Nov., 1856	122 soldiers and property.
			$7,500, in specie.
		January, 1857	1 barrel oil; 1 barrel lime. }
			3 kegs white lead.
			1 can paint. } 75 ft.
			1 package black lead.
			2 wood saws.
			1 box merchandise. }
Lieut. L. O. Morris, 2d quarter 1857	Fort Brown	March, 1857	3 barrels subsistence stores.
			1 box subsistence stores.
		Nov., 1856	Company B, 4th artillery, with all equipments and property and provisions.
Capt. P. T. Turnley, 3d quarter 1857	Fort Brown	July, 1857	2 officers.
			81 soldiers and laundresses.
			22 boxes company property, 352 ft. 5 in.
			5 bales company property, 30 ft.
			10 barrels subsistence stores.
			From Fort Brown to Ringgold barracks.
Lieut. J. P. Garesché, 3d quarter 1855	Fort Brown	August, 1855	4 soldiers.
			3 barrels whiskey.
			2 half barrels whiskey.
			6 boxes merchandise, 87 ft. 6 in.
		Sept., 1855	4 boxes company property. }
			1 box horse medicine. } 56 ft.
			1 keg lard. }
			2 boxes crushed sugar, 15 ft.
			2,265½ bushels of oats.
			21 barrels pork.
			47 boxes bacon.

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. J. P. Garesché, 3d quarter 1855	Fort Brown	Sept., 1855	175 barrels flour. 17 barrels rice. 5 barrels coffee. 14 barrels sugar. 14 boxes candles. 20 boxes soap.
Lieut. O. F. Solomon, 4th quarter 1856	Fort Brown	Sept., 1855	$35,000 specie.
		Oct., 1855	1,000 bushels of oats. 3 soldiers. 15 boxes tents. } 169 ft. 8 in. 4 tent poles. } 1 box stationery. 5 barrels sugar. 30 tierces clothing. } 93 boxes clothing. } 1,201 ft. 6 in. 28 sets of tent poles. } 4 iron pots, 120 pounds.
		Nov., 1855	27 soldiers. $12,000 specie. 24 barrels bread. 52 boxes bacon. 1 box crushed sugar. 24 boxes candles. 26 boxes soap. 28 kegs vinegar. 9 kegs molasses. 14 kegs pickles. 6 boxes clothing. } 162 ft. 2 in. 1 tierce clothing. } 1 box medicine stores, 1 ft. 8 in. 63 barrels pork.

				2 barrels hams.
				264 barrels flour.
				73 barrels bread.
				11 barrels rice.
				20 barrels coffee.
				25 barrels sugar.
				16 barrels salt.
		Dec.,	1855	5 boxes tools.
				1 barrel chalk, glue, &c. } 51 ft.
				1 keg tallow, 3 ft.
				1 smith's bellows.
				1 smith's vice.
				1 grindstone. } 1,822 pounds.
				2 anvils.
				1 bundle c st steel. } 475 pounds.
				4 bundles iron.
				7 bundles mule collars. } 37 ft.
				4 bundles buckets.
				5 bundles paulins, 58 ft.
				2 bundles forks.
				16 bars of iron.
				3 boxes of glass, 3 ft
				70 pieces lumber, 1,504 ft.
				2 boxes axes.
				12 kegs nails.
				10 hogsheads coal.
				$20,750 specie.
				220 bushels corn.
				3 boxes horse shoes, 737 pounds.
				1 box tools, 22 ft.
				380 bushels corn.
		Nov.,	1856	$5,000 specie.
Lieut. L. O. Morris, 1st quarter 1857	Fort Brown	April	1856	1,000 bushels corn.
				1 box stationery, 3 ft.
				2,000 bushels oats.
		May,	1856	1 barrel hams, 214 pounds.
				26 barrels bread, 2,973 pounds.
				12 barrels coffee, 1,965 pounds.
				2 barrels rice, 420 pounds.

STATEMENT—Continued.

Names of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. L. O. Morris, 1st quarter 1857.....	Fort Brown.....	May, 1856	5 barrels sugar, 1,321 pounds.
			3 bales rope. }
			16 boxes harness. }
			1 box wagon covers. } 216 ft.
			2 boxes wagon felloes. }
			1 box webbing. }
			12 sets wagon bows.
			20 ridge poles.
			50 tongue poles.
			40 wagon hounds.
			2,000 bushels oats.
			1,000 bushels corn.
			$12,560 specie.
		June, 1856	$4,300 specie.
			95 barrels pork.
			7 barrels hams.
			266 barrels flour.
			76 barrels bread.
			12 barrels rice.
			28 barrels coffee.
			30 barrels sugar.
			2 barrels crushed sugar.
			23 barrels salt.
			38 boxes bacon.
			23 boxes candles.
			36 boxes soap.
			35 half barrels vinegar.
		July, 1856	1 soldier.
			$35,000 specie.
			1 box merchandise, 12 feet, 2 inches.
			1 keg merchandise.

Sept.,	1856	$23,000 specie.
		1 ambulance.
		130 barrels flour.
		3 barrels dried apples.
		150 barrels flour.
		1 box medical stores.
		1 box stationery, 2 feet.
		8 kegs pickles.
		1 soldier.
Oct.,	1856	1,000 bushels oats.
		1,042 bushels corn.
		1,152 bushels oats.
		1,071 bushels corn.
		37 boxes medical stores, 126 feet, 6 inches.
Nov.,	1856	1,000 bushels oats.
		304 bushels corn.
Dec.,	1856	7 bales and 7 boxes, 90 feet.
		511 bushels corn.
		2 barrels and 1 half barrel rice.
		500 bushels oats.
		472 12/56 bushels corn.
Jan.,	1857	$6,000 specie.
		250 feet stovepipe.
		75 barrels flour.
		1 barrel crushed sugar.
		2 barrels crout.
		2 barrels onions.
		5 barrels potatoes.
		12 barrels bread.
		2 barrels rice
		1,000 bushels oats.
		85 bushels corn.
Feb ,	1857	878 bushels corn.
		$9,000 specie.
March,	1857	15 barrels pork.
		9 barrels bread.
		42 barrels flour.
		2 barrels rice.
		3 barrels coffee.

STATEMENT—Continued.

Names of officers.	Where stationed	Date of transportation.	Place and articles.
Lieut. L. O. Morris, 1st quarter 1857	Fort Brown	March, 1857	4 barrels sugar. 1 barrel crushed sugar. 3 barrels salt. 1 tierce hams. 5 half barrels vinegar. 5 boxes candles. 6 boxes soap. 410 feet lumber. 509 pounds of iron. 2 boxes mule shoes. 1 keg of oil.
		March, 1857	1 bundle axe helves. 1 bundle leather. 1 bundle stationery. 1 soldier. 1 box clothing. 1 bale clothing. 628 feet lumber. 1 safe and $7,000 in specie.
Lieut. L. O. Morris, 4th quarter 1856	do	Nov., 1855	1 soldier.
		Jan, 1856	1 box of clothing. $8,500 specie.
		February	3 kegs molasses. 28 boxes harness. 1 box opodeldoc. 3 boxes clothing, 2 bales clothing. } 28 ft. 9 in.
		March	1 box medical stores. 3 ft. $20,000 specie. 5 boxes mule shoes, 700 pounds. 1 box merchandise.

		April	24 boxes horse equipments, 384 ft. 7 in.
			3 boxes merchandise.
			$9,000 specie.
			1 ambulance.
			2,000 bushels oats.
Lieut. L. O. Morris, 2d quarter 1857	do	March, 1857	1,000 bushels oats.
			84 bushels corn.
		April	1 case of pack saddles. }
			1 box wagon covers. } 36 ft. 6 in.
			1 package paper. }
			2 bundles iron, 112 pounds.
			600 bushels corn.
			25 plank, 677 feet.
			7 boxes medical stores, 21 feet.
			1 box company's property, 4 ft. 9 in.
Lieut J. W. Robertson, 1st quarter 1857	Ringgold Barracks	Jan., 1857	250 feet stovepipe.
			1 doz merchandise. } 14 ft.
			1 keg pickles. }
Captain P. T. Turnley, 3d quarter 1857	Fort Brown	July, 1857	200 bushels corn.
			100 bushels oats.
			300 bushels corn.
			400 bushels oats.
			1 barrel hams.
			From Ringgold Barracks to Fort Brown.
Lieut. J. P. Garesche, 3d quarter 1855	do	August, 1855	3 soldiers.
			1 expressman and horse.
			1 box merchandise, 2 ft. 6 in.
			15 pieces lumber, 450 feet.
Lieut. W. G. Gill, 4th quarter 1855	do	Nov., 1855	2 teamsters.
Lieut. L. O. Morris, 1st quarter 1857	do	July, 1856	5 soldiers.
		Nov	11 companies of troops and their property.
		Nov	$7,500 in specie.
			$26,500 in specie.
		Feb	1 box ordnance stores.
			1 box stationery.
Lieut. L. O. Morris, 2d quarter 1857	do	April, 1857	$2,000 specie.
			Company C. 1st artillery, with all equipments and property.

STATEMENT—Continued.

Name of officers.	Where stationed.	Date of transportation.	Place and articles.
Lieut. L. O. Morris, 2d quarter 1855	Fort Brown	April, 1857	Equipments of artillery company, including travelling forge. 58 boxes implements. 12 boxes paulins. 1 trail. } 695 ft. 6 in.
Lieut., J. W. Robertson	Ringgold Barracks	January	1 box merchandise, 2 ft. 6 in. 1 officer. 12 soldiers.
			Fort McIntosh to Fort Duncan.
Lieut. J. E. Slaughter, 1st quarter 1857	Fort McIntosh	January, 1857	5,927 pounds subsistence stores. 12,915 pounds subsistence stores. 9,347 pounds subsistence stores.

Brazos and Fort Brown.

Dollars, specie	65 pounds per $1,000.
Barrel chalk and glue	5 feet.
Box of axes	40 pounds.
Keg of nails	100 do.
Bundles of forks	10 do.
Smiths' bellows	12 feet.
Barrel of hams	214 pounds.
Barrel of bread	100 do.
Barrel of rice	210 do.
Barrel of coffee	164 do.
Barrel of brown sugar	265 do.
Barrel of crushed sugar	200 do.
Barrel of salt	225 do.
Barrel of beans	225 do.
Boxes of bacon	180 do.
Boxes of candles	30 do.
Boxes of soap	40 do.
Half barrel of vinegar	125 do.
Half barrel of molasses	175 do.
Kegs of pickles	75 do.
Hogshead of coal	1,000 do.
Grindstone	75 do.
Bundles of sacks	25 do.
Kegs of molasses	75 do.
Package of blankets	25 do.
20 ridge poles, each	10 do.
50 tent poles, each	10 do.
40 wagon hounds, each	10 do.
12 wagon hubs, each	1 foot.
12 wagon tongues, each	20 pounds.
60 wagon wheel boxes, each	2 do.
Barrel of coal	150 do.
Barrel of crout	250 do.
Barrel of onions	200 do.
Barrel of potatoes	150 do.
Casks of coal	300 do.
Bundles of stores	
Bundles of leather	25 pounds.
Barrels of dried apples	150 do.
Box of med. stores	[3½]
Kegs of vinegar	125 pounds.
Bundle of whips	
Box of cans	
Box of hardware	50 pounds.
Box of instruments	
Box of scales	50 pounds.
Half barrel of rice	105 do.
4 shovels, 2 chisels, 4 spades, 2 cans, 2 axes, and 2 saws	25 do.
2 boxes and 1 bale	
1 box company property	
6 office chairs	
Baggage, property, and munitions of one company of 1st artillery and 12 cavalry soldiers	1,500 pounds.
1 blank book	
1 cart and harness	300 pounds.
975 pounds of nails	975 do.
1 can of oil	
25 logs palmetto, each	25 feet.
1 roll stovepipe	
3 demijohns of oil, each	30 pounds.
5 barrels of stores	5 feet.
4 boxes merchandise	10 do.
3 barrels of subsistence, each	5 do.
1 box of subsistence	5 do.
Equipments, property, &c., of comp'y B, 4th artillery	1,500 pounds.
Barrel of whiskey	300 do.
Half barrel whiskey	150 do.
Box of stationery	[2 ft.]
Keg of merchandise	
Ambulance	400 pounds.
250 feet stovepipe	100 feet.
Tierce of hams	250 pounds.
Box of mule shoes	100 do.
Keg of oil	100 do.
1 bundle axe-helves, 1 bundle leather, 1 bundle stationery	3 feet.
1 box of clothing	10 do.
1 bale of clothing	10 do.
Iron safe	400 pounds.
Boxes of harness	10 feet.
Boxes of opodeldoc	
1 horse	
Box of ordnance stores	100 pounds.

Fort Brown and Ringgold Barracks.

Barrels of whiskey, 300 pounds; half barrel of whiskey, 150 pounds; 1 box of stationery.

The undersigned, having served five years in the subsistence department, and one year in the quartermaster's department, United States army, and being entirely familiar with the matters of supplies and transportation in those departments, has gone carefully over the above list, furnished him by Mr. DeBow and Mr. McPherson, and marked against each article contained the average weight or dimension, being especially careful in every instance, according to instructions, where there was any possible doubt, to put the lowest figures.

J. L. COBURN, *late Capt. U. S. Army.*

WASHINGTON CITY, *July* 9, 1859.

The above may be read in evidence.

J. D. McPHERSON, *Deputy Solicitor.*

Inspection of steamboat Guadalupe.

Having been called on to examine the hull of the steamboat Guadalupe, lying at Brownsville, I repaired on board of her on the 5th inst., and, accompanied by Mr. Bichard Beaseley, a competent ship carpenter, I carefully examined her hull, and her frame particularly.

I found that she is four years old, of a very flat model, with sharp bow and square stern. Her frame is strong and close timbered, the floor-heads at the knuckle being of sawed curve timber. Her bow is well and strongly secured with breast-hooks and chocks over the apron. She has a good bulkhead amidships, and bulkhead stancheons in each wing, running fore and aft.

Having sounded her frame at all the points in her hull where such vessels are most likely to rot, I found her perfectly sound in all parts. She is provided with one seven-eighths inch bower chain, and one bower anchor of about five cwt., with several seven and nine inch hawsers, and I consider her to be a sound, seaworthy, and safe boat for the trade in which she is engaged, viz: from Brownsville to Roma, on the Rio Grande, and all intermediate places, and to the mouth of the Rio Grande, inside; and that goods on her ought to be insured at the usual rate of premium paid on other first class boats.

JNO. R. BUTLER,
Agent of Underwriters.

Brownsville, *September* 6, 1856.

By authority of the United States of America.

Steamer Guadalupe.—Inspectors' certificate.

State of Texas, *District of Galveston.*

Application having been made in writing to the subscribers, inspectors for said district, to inspect the steamer Guadalupe, of Galveston, in the State of Texas, whereof Stacy B. Lewis and others are owners, and C. Blakeman is master, we having performed that service, now on this 2d day of October, A. D. 1854, do certify that she was built at West Elizabeth, in the State of Pennsylvania, in the year 1852; is of 137$\frac{47}{95}$ tons burden, and is in all respects staunch, seaworthy, and in good condition for navigation; having suitable means of escape from the main to the upper deck in case of accident; that she is provided with fifteen state-rooms, two berths to each; has thirty permanent cabin, and extra or movable cabin passenger berths, to accommodate thirty persons; that she is a steamer sailing to and from inland ports, a distance of five hundred miles or upwards, and is permitted to carry —— deck passengers, (except when making voyages from New Orleans to St. Louis,) when the following rules shall be observed, to wit:

A berth, bunk, or hammock shall have space of at least six feet long, twenty-two inches wide and two feet high, clear of obstruction, and easy of access for each passenger. Children one year old, or

less, shall not be included in the calculation. Two children, whose united ages shall not exceed sixteen years, shall be counted as one passenger. When there are four or more tiers of berths in height, ten square feet of deck room shall be allowed for each passenger; when there are three tiers of berths in height, twelve square feet for each passenger; when there are two tiers of berths in height, fourteen square feet for each passenger; when there shall be but one tier of berths in height, fifteen square feet for each possenger. These spaces shall be calculated only in suitably enclosed deck room, which shall be properly warmed in cold weather, and properly ventilated at all times.

That she is provided with two high pressure boilers, twenty feet long and thirty-eight inches in diameter, of cylindrical form, with two fifteen-inch return flues in each, constructed of iron one-fourth of an inch in thickness, and made in the year of 1852; that they are in all respects conformable to law; that each boiler has been subjected to a hydrostatic pressure of 165 pounds to the square inch; that the maximum working power allowed was 140, determined by the act of August 30, 1852.

That there are two safety valves, with nine square inches area; that the load prescribed to each is such as to allow but 140 pounds pressure per square inch; one left in charge of the engineer, and one withdrawn from interference of the officers of the boat; has two supply pipes of two inches in diameter, and has sufficient means to keep the water at all times and under all circumstances up to four inches over the flues; has two steam pipes, of three and one-half inches in diameter each; has two high pressure engines, with cylinders fourteen inches in diameter each, and four and one-half feet stroke; has two forcing pumps, of two and one-half inches plunge, and fourteen inches stroke each, worked by a doctor engine; has two water gauges and two steam gauges, all properly secured; uses the alloyed metal, with Evans's safety guards, which fuses at 140 pounds pressure; has two fire forcing pumps of six inches stroke each, and four inches in diameter of plunge; has fifty feet of hose, eighteen buckets, and five axes; has one life-boat, in good order, and ; has thirty life-preservers and floats, containing superficial feet; has additional steering apparatus.

We further certify that the equipments of the vessel, throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid, hose, boats, life-preservers, spark-arresters, blocks, rigging, anchors, and other things, are in conformity with the provisions of law; and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a steamer upon the waters herein specified, without peril to life, from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and we further certify that the said vessel is to run within the following limits, to wit:

From the port of Galveston, Galveston Bay, to the port of , touching at the intermediate places, and back; and also to other ports or waters usually navigated by boats of the same class.

M. L. PARRY. [L. S.]
HEZK. A. WILSON. [L. S.]

STATE OF TEXAS, *District of Galveston, ss:*

Personally appeared before me, the undersigned, collector of customs in and for said district, M. L. Parry and H. A. Wilson, duly appointed inspectors of hulls and steam boilers for the district of Galveston, and made solemn oath that the annexed certificate of inspection is just and true.

Sworn and subscribed before me this 2d day of October, A. D. 1854.

[L. S.] H. STEWART,
Collector.

I hereby certify that the above is a true copy of the original, on file in this office.

H. STEWART, *Collector.*

Port of Galveston, October 2, 1854. A true copy.
W. G. GILL,
First Lieutenant Fourth Artillery.

A true copy.
E. J. SIBLEY,
Major and Quartermaster.

BY AUTHORITY OF THE UNITED STATES OF AMERICA.

Steamer Swan.—Inspectors' certificate.

STATE OF TEXAS, *District of Galveston, ss:*

Application having been made in writing to the subscribers, inspectors for said district, to inspect the steamer Swan, of Galveston, in the State of Texas, whereof R. Mills, Jacob Matson, Joseph Myers, L. G. Hill, and W. H. Rayne are owners, and Jacob Matson is master, we having performed that service, now, on this 25th day of February, A. D. 1855, do certify that she was built at Louisville, in the State of Kentucky, in the year 1851; is of one hundred and twenty-six tons burden, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means for escape from the main to the upper deck in case of accident; that she is provided with six state-rooms, with two berths to each; has twelve permanent cabin and —— extra or movable cabin berths, and has suitable accommodations for thirty cabin passengers; that she has also berths suitable for deck or other class passengers to accommodate —— persons; that she is a steamer sailing to and from inland ports a distance of five hundred miles or upwards, and is permitted to carry —— deck passengers, (except when making voyages from New Orleans to St. Louis,) when the following rules shall be observed, to wit: A berth, bunk, or hammock shall have space of at least six feet long, twenty-two inches wide, and two feet high, clear of obstruction, and easy of access for

each passenger. Children one year old or less shall not be included in the calculation. Two children, whose united ages shall not exceed sixteen years, shall be counted as one passenger. When there are four or more tiers of berths in height, ten square feet of deck room shall be allowed for each passenger; when there are three tiers of berths in height, twelve square feet for each passenger; when there are two tiers of berths in height, fourteen square feet for each passenger; when there shall be but one tier of berths in height, or when there are no berths, fifteen square feet shall be allowed for each passenger. These spaces shall be calculated only in suitably enclosed deck room, which shall be properly warmed in cold weather, and properly ventilated at all times. That she is provided with two high-pressure boilers, twenty-four feet long and forty-two inches in diameter, of cylindrical form, with two sixteen-inch return-flues in each, constructed of iron of one-fourth of an inch in thickness, and made in the year 18—; that they are in all respects conformable to law. That each boiler has been subjected to a hydrostatic pressure of one hundred and eighty-five pounds to the square inch; that the maximum working power allowed was not determined by the rule prescribed by the act of August 30, 1852, for the reason that the relative size of her cylinders and boilers would render the law unjust. That there are —— safety-valves, with sixteen square inches area; that the load prescribed to each is such as to allow but one hundred and forty pounds pressure per square inch; one left in charge of the engineer, and one withdrawn from interference of the officers of the boat. Has two supply-pipes of two and one-half inches each in diameter, and has sufficient means to keep the water at all times, and under all circumstances, up to four inches over the flues; has two steam-pipes of five inches in diameter each; has two high-pressure engines, with cylinders sixteen inches in diameter each, and six feet stroke; has two forcing-pumps of three and three-fourths inches plunge and twelve inches stroke each, worked by a doctor engine; has two water-gauges and two steam-gauges, all properly secured; uses the alloyed metal, with Evans's safety-guard, which fuses at one hundred and forty pounds pressure; has —— fire-forcing pumps of six inches stroke each, and four inches in diameter of plunge; forty feet water-pipe; has sixty feet of hose, twenty buckets, and five axes; has one life-boat, in good order, and twenty-two feet long; has forty life-preservers, and no floats, containing —— superficial feet; has additional steering apparatus.

We further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid; hose, boats, life-preservers, spark-arresters, blocks, rigging, anchors, and other things are in conformity with the provisions of law, and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a steamer upon the waters herein specified without peril to life from imperfection of form, materials, workmanship, or arrangement of the separate parts, or from age or use. And we further certify that the said vessel is to run within the following limits, to wit: From the port of Galveston, Galveston bay, to the port of Galveston; thence to Bolivar, on the Brazos river, touching at the intermediate

places, and back; and also to other ports, and on waters usually navigated by boats of the same class.

H. A. WILSON. [L. S.]
J. E. HAVELAND. [L. S.]

STATE OF TEXAS, *District of Galveston, ss:*

Personally appeared before me, the undersigned, collector of customs in and for said district, Hezekiah Wilson and James E. Haveland, duly appointed inspectors of hulls and steam-boilers for the district of Galveston, and made solemn oath that the annexed certificate of inspection is just and true.

Sworn and subscribed before me this 3d day of March, A. D. 1855.

[L. S.] M. MENARD,
Deputy Collector.

I hereby certify that the above is a true copy of the original on file in this office.

M. MENARD,
Deputy Collector.

PORT OF GALVESTON, *March* 8, 1855.

A true copy.

J. SIBLEY,
Major and Quartermaster.

PORT OF BRAZOS SANTIAGO,
March 18, 1856.

This is to certify that we, the undersigned, have this day examined the steamboat called the Swan, whereof —— Blakeman is at present master, and found said boat to be sound, and, in our opinion, suitable for the business in which she (the said boat) is at present employed.

STEPHEN K. RUSSELL,
First Officer Steamship Nautilus.
A. S. ACKLEY,
Captain Schooner Chrysolite.

A true copy.

J. SIBLEY,
Major and Quartermaster.

BY AUTHORITY OF THE UNITED STATES.

Steamer Swan.—Inspector's certificate.

STATE OF TEXAS, *Fourth Supervising District, ss:*

Application having been made in writing to the subscriber, supervising inspector for the said district, to inspect the steamer Swan, of Brownsville, in the State of Texas, whereof Joseph San Roman,

James Grogan, John Young, A. Werbiski, Pedro Llosas, T. Delmas, and others are owners, and Curtis Blakeman is master, I having performed that service, now on this 4th day of August, A. D. 1856, do certify that she was built at Louisville, in the State of Kentucky, in the year 1851, of 126 tons burden, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means for escape from the main to the upper deck in case of accident; that she is provided with six state-rooms, with two berths to each; has twelve permanent cabin and —— extra or movable cabin berths, and has suitable accommodations for thirty cabin passengers; that she has also berths suitable for deck or other class passengers to accommodate —— persons; that she is a steamer, sailing to and from inland ports, a distance of five hundred miles, or upward, and is permitted to carry —— deck passengers; that she is provided with two high pressure boilers, 24 feet long and 42 inches in diameter, of cylindrical form, with two 16-inch return flues in each, constructed of iron, of one-fourth of an inch in thickness, and made in the year 1851; that they are in all respects conformable to law; that each boiler has been subjected to a hydrostatic pressure of 195 pounds to the square inch; that the maximum working power was not determined by the rule prescribed by the act of August 30, 1852, for the reason that the relative proportion of her cylinders and boilers would render its application unjust; that there is one safety valve with 16 square inches area; that the load prescribed to each is such as to allow but 130 pounds pressure per square inch; left in charge of the engineer, and none withdrawn from interference of the officers of the boat; has two supply pipes, of 2½ inches each in diameter, and has sufficient means to keep the water, at all times and under all circumstances up to four inches over the flues; has two steam-pipes of 5 inches in diameter each; has two high-pressure engines with cylinders 16 inches in diameter each and 6 feet stroke; has two forcing pumps of 3¾ inches plunge and 12 inches stroke each, worked by a doctor engine; has two water gauges and one steam gauge, all properly secured; uses the alloyed metal, with Evans' safety guards, which fuses at 130 pounds pressure; has one fire-forcing pump of 6 inches stroke each and 4 inches in diameter of plunge, 40 feet water pipe; has 85 feet of hose, 20 buckets, and five axes; has one life-boat in good order and one yawl; has 30 life-preservers and —— floats, containing —— superficial feet; has additional steering apparatus. I further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid, hose, boats, life-preservers, spark arresters, blocks, rigging, anchors, and other things, are in conformity with the provisions of law, and that I declare it to be my deliberate conviction, founded upon the inspection I have made, that the vessel may be employed as a steamer upon the waters herein specified, without peril to life from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and I further certify that the said vessel is to run within the following limits, to wit: From the port of Brazos Santiago to the port of Brownsville, touching at

the intermediate places, and back; and also to other ports and on waters usually navigated by boats of the same class.

STATE OF TEXAS, *Fourth Supervising District, ss:*

Personally appeared before me, the undersigned collector of customs in and for said district, W. E. Muir, duly appointed supervising inspector of steamboats for the fourth district, and made solemn oath that the annexed certificate of inspection is just and true.

W. E. MUIR,
L. S.] *Supervising Inspector of 4th district.*

Sworn and subscribed before me this 5th day of August, A. D. 1856.

JAMES H. DURST,
[L. S.] *Collector.*

I hereby certify that the above is a true copy of the original on file in this office.

THEO. C. YARD,
Deputy Collector.

PORT OF POINT ISABEL, *September* 5, 1856.

BY AUTHORITY OF THE UNITED STATES OF AMERICA.

Steamer Guadalupe.—Inspector's certificate.

STATE OF TEXAS, *Fourth Supervising District, ss:*

Application having been made, in writing, to the subscriber, supervising inspector for said district, to inspect the steamer Guadalupe, of Brownsville, in the State of Texas, whereof Joseph San Roman, James Grogan, John Young, A. Werbiski, Pedro Llosas, T. Delmas, and others are owners, and Forrest is master, I having performed that service now, on this 5th day of August, A. D. 1856, do certify that she was built at West Elizabeth, in the State of Pennsylvania, in the year 1852, of 137$\frac{4}{5}$ths tons burden, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means for escape, from the main to the upper deck, in case of accidents; that she is provided with 15 state rooms, with two berths to each; has 30 permanent cabin, and — extra or movable cabin berths, and has suitable accomodations for 30 cabin passengers; that she has also berths suitable for deck or other class passengers to accommodate — persons; that she is a steamer sailing to and from inland ports a distance of 500 miles or upward, and is permitted to carry — deck passengers; that she is provided with two high-pressure boilers, 20 feet long, and 38 inches in diameter, of cylindrical form, with two 15-inch return flues in each, constructed of iron of one-quarter of an inch in thickness, and made in the year 1852; that they are in all respects conformable to law; that each boiler has been subjected to a hydrostatic pressure of 200 pounds to the square inch; that the maximum working power was determined by the rule prescribed by the act

of August 30, 1852; that there are two safety valves, with nine square inches area; that the load prescribed to each is such as to allow but 140 pounds pressure per square inch—one left in charge of the engineers, and one withdrawn from interference of the officers of the boat. Has two supply pipes, of two inches each in diameter, and has sufficient means to keep the water at all times and under all circumstances up to four inches over the flues; has two steam pipes of 3½ inches in diameter each; has two high-pressure engines, with cylinders 14 inches in diameter each, and 4½ feet stroke; has two forcing pumps of 2½ inches plunge, and 14 inches stroke each, worked by a doctor engine; has two water gauges and two steam gauges, all properly secured. Uses the alloyed metal, with Evans's safety guard, which fuses at 140 pounds pressure. Has two fire-forcing pumps of six inches stroke each, and four inches in diameter of plunge; has 50 feet of hose, 20 buckets, and five axes; has one life-boat in good order, and ——; has 30 life preservers and floats, containing — superficial feet; has additional steering apparatus.

I further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid, hose, boats, life-preservers, spark-arresters, blocks, rigging, anchors, and other things, are in conformity with the provisions of law, and that I declare it to be my deliberate conviction, founded upon the inspection I have made, that the vessel may be employed as a steamer upon the waters herein specified without peril to life, from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use.

And I further certify that the said vessel is to run within the following limits, to wit: From the port of Brownsville to the port of Roma, on the Rio Grande river, touching at the intermediate places, and back; and also to other ports, and on waters usually navigated by boats of the same class.

STATE OF TEXAS, *Fourth Supervisory District, ss:*

Personally appeared before me, the undersigned collector of customs in and for said district, W. E. Muir, duly appointed supervising inspector of steamboats for the fourth district, and made solemn oath that the annexed certificate of inspection is just and true.

[SEAL.] W. E. MUIR,
Supervising Inspector Fourth District.

Sworn to and subscribed before me this 5th day of August, A. D. 1857.

[SEAL.] JAMES H. DURST,
Collector.

PORT OF POINT ISABEL,
September 5, 1856.

I hereby certify that the above is a true copy of the original file in this office.

THEO. C. YARD,
Deputy Collector.

Proposals of J. B. Armstrong, for supplies on Rio Grande, Texas, May 31, 1855.

I propose to transport, in good and substantial steamboats, any and all government supplies for the term of two years commencing on the 1st day of August next, at the following rates from Brazos Santiago to Fort Brown, to wit: For each and every barrel of flour, forty cents; for each and every barrel of pork, ninety cents; for all other barrels, bundles, casks, boxes, bales, or all measurement freight, eight cents per cubic foot; for each and every bushel of corn, oats, or other grain, twelve and a half cents; for each and every bale of hay, one dollar and fifty cents; for each and every thousand feet of lumber, ten dollars; for each and every thousand of shingles, one dollar and ten cents; for all "pound freight" such as iron, nails, lead, cannon, balls, shells, (not loaded,) light field batteries, twenty-five cents per hundred pounds; for each and every six-mule wagon, (such as are now in use in the quartermaster's department,) including body, running-gear, and tongue, seven dollars; for each and every soldier and government employé, two dollars and fifty cents; for each and every horse and mule, four dollars.

From Fort Brown, or from Brownsville to Ringgold Barracks, for each and every barrel of flour, one dollar; for each and every barrel of pork, one dollar and twenty cents; for all other barrels, boxes, bales, bundles, casks, or all measured freight, twenty cents per cubic foot; for each and every thousand feet of lumber, eighteen dollars per thousand feet; for each and every thousand shingles two dollars and fifty cents per thousand; for each and every bushel of corn or oats, twenty-two cents; for each and every bale of hay, two dollars and seventy-five cents; for all pound freight, such as iron, nails, lead, cannon balls, shells, (not loaded,) and light field batteries, sixty cents per hundred pounds; for six-mule wagons, (such as are now in use in the quartermaster's department,) including body, running-gear, and tongue, eighteen dollars each; for each and every soldier, and for each and every government employé, four dollars; for each and every horse, and for each and every mule, six dollars.

Should it be required at any time to receive or discharge freight at any other point on the Rio Grande, between the mouth and Roma, not named in the contract when made, I will carry it at the current rate at the time of shipment.

J. B. ARMSTRONG.

Brownsville, *May* 31, 1855.

A true copy from the files of this office.

TH. S. JESUP,
Quartermaster General.

Articles of agreement, made and entered into this thirteenth day of July, anno Domini one thousand eight hundred and fifty-four, between Captain Stewart Van Vliet, an assistant quartermaster in the United States army, on the one part, and M. Kenedy & Co., of the county of Cameron and State of Texas, of the other part, witnesseth:

That, for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said Captain S. Van Vliet for and on behalf of the United States of America, the said M. Kenedy & Co., their heirs, executors, and administrators, have covenanted and agreed, and by these presents do covenant and agree, as follows, viz:

First. That the said M. Kenedy & Co., their heirs, executors, and administrators, shall, on the application of the quartermasters or their agents at Brazos Santiago and Fort Brown, Texas, receive on board of good and seaworthy steamboats, and transport without delay, all government stores of whatsoever description from Brazos Santiago to Fort Brown and from Fort Brown to Ringgold Barracks, Texas, as may be required from time to time during the existence of this contract by said quartermasters or their agents.

Second. It is further agreed that the said government stores shall be received at the wharf or the ship tackles at Brazos Santiago, and at the wharf or landing at Fort Brown, and any expense for transporting said stores from the storehouses to the said wharves shall be defrayed by the United States.

Third. And it is further agreed that this contract shall continue one year from the date of the signing of the same.

And it is further agreed that the said M. Kenedy & Co., their heirs, executors, and administrators, shall transport all government stores from Ringgold Barracks to Fort Brown, and from Fort Brown to Brazos Santiago, in the same manner and at the same rates as from Fort Brown to Ringgold Barracks and from Brazos Santiago to Fort Brown.

And it is further agreed that on the condition of the fulfilment by the said M. Kenedy & Co., their heirs, executors, or administrators, of the foregoing provisions of this contract, the said Captain Stewart Van Vliet, for and in behalf of the United States of America, shall and will, for transporting the said government stores as aforesaid, pay or cause to be paid to the said M. Kenedy & Co., their heirs, executors, or administrators, at the following rates:

For transporting from Brazos Santiago to Fort Brown, for each and every barrel of flour, fifty cents; for every barrel of pork, one dollar; all other barrels, boxes, bales, bundles, casks, or all measurement freight, ten cents per cubic foot; for corn and oats, fifteen cents per bushel; for each bale of hay, two dollars; for every thousand feet of lumber, twelve dollars; for every thousand shingles, one dollar and fifty cents; for all pound freight, such as iron, nails, lead, cannon balls, shells, (not loaded,) and light field batteries, thirty cents per hundred pounds; for six-mule wagons, such as are now in use in the quartermaster's department, including body, running-gear, and

tongue, ten dollars; soldiers and government employés, three dollars each; horses and mules, five dollars each.

For transporting from Fort Brown to Ringgold Barracks, for each and every barrel of flour, one dollar and twenty-five cents; for every barrel of pork, two dollars; for every thousand feet of lumber, twenty dollars; for every thousand shingles, two dollars and seventy-five cents; for each bushel of corn or oats, twenty-three cents; for each and every bale of hay, three dollars; for all other barrels, boxes, bales, bundles, casks, or all measurement freight, twenty-five cents per cubic foot; for all pound freight, such as iron, nails, lead, cannon balls, shells, (not loaded,) and light field batteries, seventy-five cents per hundred pounds; for six-mule wagons, such as are now in use in the quartermaster's department, including body, running gear, and tongue, twenty dollars; soldiers and government employés, each and every one, five dollars; horses and mules, seven dollars each.

It is further agreed that payment shall be made monthly for the stores transported under this contract; but in the event of the quartermaster or his agents being without funds, then payment to be made as soon after as funds may be received for that purpose.

It is further agreed that should the contractors be required to receive or deliver freight or troops at any other point on the Rio Grande, between the mouth and Roma, not named in the contract, they shall be paid at the current rates prevailing at the time of shipment.

In witness whereof, the parties to this contract have hereunto affixed their hands and seals, this thirteenth day of July, anno Domini one thousand eight hundred and fifty-four.

STEWART VAN VLIET,
Captain, Assistant Quartermaster.
M. KENEDY & CO.

Executed in presence of—
JOSEPH HOPKINS.
W. DOUGLAS.

I certify that this is a true copy of the original contract received at this office, and now deposited with the Second Comptroller of the Treasury.

TH. S. JESUP,
Quartermaster General.

Proposal for the transportation by water of army stores, supplies, &c., from Brazos de Santiago, Texas, to Fort Brown, and thence to Ringgold barracks, Texas, for the period of two years, commencing on the 1st day of August, A. D. 1855:

The undersigned agrees to transport, as above, from Brazos de Santiago, Texas, to Fort Brown, at the following rates, viz:

Flour, fifty cents per barrel.
Pork, one dollar per barrel.

For all other barrels, boxes, bales, bundles, packages, casks, kegs, or all measurement freight, ten cents per cubic foot.
Corn or oats, fifteen cents per bushel.
Hay, two dollars per bale.
Lumber, twelve dollars per thousand feet.
Shingles, one dollar and fifty cents per thousand.
For all pound freight, such as iron, nails, lead, cannon balls, and shells, not loaded, thirty cents per hundred pounds.
Fixed ammunition, in boxes, fifty cents per hundred pounds.
All artillery, including carriages, mortars and beds, and powder, one dollar per hundred pounds.
Wagons, such as are now in use here in the quartermaster's department, ten dollars each.
Soldiers and government employés, three dollars each.
Horses or mules, five dollars each.

The undersigned also agree to transport, as above, from Fort Brown, Texas, to Ringgold Barracks, Texas, at the following rates, viz:

Flour, one dollar and twenty-five cents per barrel.
Pork, two dollars per barrel.
For all other barrels, bales, boxes, bundles, packages, casks, kegs, or all measurement freight, twenty-five cents per cubic foot.
Corn or oats, twenty-three cents per bushel.
Hay, three dollars per bale.
Lumber, twenty dollars per thousand feet.
Shingles, two dollars and seventy-five cents per thousand.
For all pound freight, such as iron, nails, lead, cannon balls, shells, not loaded, seventy-five cents per hundred pounds.
Fixed ammunition, in boxes, one dollar per hundred pounds.
All artillery, including carriages, mortars and beds, and powder, one dollar and fifty cents per hundred pounds.
Wagons, such as are now in use here in the quartermaster's department, twenty dollars each.
Soldiers and government employés, five dollars each.
Horses or mules, seven dollars each.

M. KENEDY & CO.

BROWNSVILLE, *Texas, May* 31, 1855.

NOTE.—The undersigned also agree to transport army stores, supplies, &c., as enumerated in the above proposal, from Ringgold barracks to Fort Brown, Texas, and from Fort Brown to Brazos de Santiago, Texas, at the same rates as from Fort Brown to Ringgold barracks, Texas, and from Brazos de Santiago to Fort Brown, Texas.

M. KENEDY & CO.

A true copy from the files of this office.

MAJOR GENERAL JESUP,
Quartermaster General.

BROWNSVILLE, *Texas, May* 32, 1855.

Statement showing the freight transported on the Rio Grande by the opposition line of boats.

The following is a statement of the receipts of steamers Ranchero, Grampus, and Grampus No. 2, from August 1, 1855, to July 31, 1857:

Private business.

Steamer Grampus and Grampus No. 2, from Brazos de Santiago to Brownsville	$64,693 99
Steamer Ranchero, from Brownsville to Roma	78,141 17
Total amount of private business	142,835 16

Quartermaster's business.

Steamers Grampus and Grampus No. 2, from Brazos de Santiago to Fort Brown	7,687 65
Steamer Ranchero, from Fort Brown to Ringgold Barracks	13,461 51
Total amount of quartermaster's business	21,149 16

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, July 15, 1855.

SIR: By direction of the general commanding the department of Texas, I enclose herewith a copy of a letter of instructions received yesterday from the quartermaster general relative to a contract for the transportation of public supplies on the Rio Grande.

The general commanding the department directs me to say that you will suspend all action in regard to the new contract until you receive instructions from him, and will in the meantime continue to employ the steamboats of M. Kenedy & Co, on the terms and conditions of their old contract.

The general understands that the only persons who put in a bid for the new contract besides M. Kenedy & Co. is a Mr. Armstrong, and that his bid was less than that of M. Kenedy & Co., the old contractors. He directs that you will report to me whether Mr. Armstrong is a responsible man, and whether he is well prepared to carry his contract into effect; if he is himself the owner of property; if he is efficient and energetic; in fine, if he is capable of performing the contract as satisfactorily to the government as M. Kenedy & Co. have theirs for the last four years. The general does not care to know who his backers or sureties are, for his experience has convinced him that sureties, generally, on this frontier are of very little account, but he desires you to report whether Mr. Armstrong is as responsible, as

reliable, and as capable of carrying out his contract in good faith as the persons connected with the company of M. Kenedy.

The general also directs that you will report what boats Mr. Armstrong proposes to put on the Rio Grande, their names, capacity, and draught of water; how long they have been running, and where; their present value, and how they will compare with the boats of M. Kenedy & Co.; whether the boat he proposes to run from Brazos Santiago around to the mouth of the Rio Grande and thence to Fort Brown is strong and seaworthy, and whether shippers in New Orleans can effect insurance of their goods on her.

The general further directs that you will send copies of the old contract with M. Kenedy & Co., and of the new one, if one has been executed with Mr. Armstrong; also copies of the late bids of M. Kenedy & Co. and Mr. Armstrong.

Very respectfully, your obedient servant,

W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Dep. of Texas.

Lieut. J. P. GARESCHÉ, *Acting Assist. Quartermaster,*
Fort Brown, Texas.

A true copy.

W. W. CHAPMAN,
Assistant Quartermaster.

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, July 15, 1855.

GENERAL: I had the honor to receive yesterday your communication of the 25th ultimo, relative to the new contract for the transportation of public supplies on the Rio Grande, and have this day addressed Lieutenant Garesché, acting assistant quartermaster at Fort Brown, a letter on the subject, of which the enclosed is a copy.

I have the honor to be, general, very respectfully, your obedient servant,

W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Dep. of Texas.

Major General T. S. JESUP, *Quartermaster General,*
Washington, D. C.

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

BROWNSVILLE, *June* 10, 1855.

SIR: The undersigned, as you are aware, have been the contractors for the last four years for the transportation of government supplies, &c., from Brazos de Santiago to Fort Brown and Ringgold barracks, and have again bid for the contract, in accordance with a publication from the assistant quartermaster at Fort Brown, for proposals for two years, commencing first day of August next. The contract has been awarded here to other parties, they having bid a fraction under our rates and what we have been carrying for heretofore.

As we believe we are the only responsible bidders here for this contract, having now three boats here and another building, and every other requisite to perform the service required with quickness and despatch, we would respectfully ask that in the event of failure on the part of the parties to whom the contract has been awarded to comply with it, that the contract be made with us.

We feel a pride in having carried out every provision of this contract for the last four years, and without a single failure, although at times with disadvantage to ourselves, on account of small amounts being required to be transported.

Please excuse the liberty we have taken, and trespassing on your time, and believe us to be, with much respect, your obedient servants,

M. KENEDY & Co.

Colonel CHARLES THOMAS,
Assistant Quartermaster General U. S. Army.

A true copy from the files of this office.

THOS. S. JESUP,
Quartermaster General.

[Indorsement.]

Respectfully referred to the quartermaster general, to whom this communication should have been addressed.

CHAS. THOMAS,
Deputy Quartermaster General.

JUNE 20, 1855.

AGENCY OF THE BOARD OF UNDERWRITERS OF N. ORLEANS AND N. YORK,
Point Isabel, August 8, 1855.

RESPECTED SIR: On the 6th instant I repaired on board of the steamer Swan, recently arrived in this port, intended to run outside, between this port and the Rio Grande, and assisted by John Bartel, a competent ship-carpenter, I carefully inspected her hull, ground tackle, &c. I found her to be nearly five years old, of a flat, long-floored model, with square stern and two rudders, with very narrow guards. Her frame is strong and close-timbered, with powerful bulkheads running fore and aft amidships, and in both wings shows no sign of weakness or having "worked" in her frame in the sea-way. After a careful inspection of all the points in her hull, where vessels of her class are

most likely to rot, I found her to be perfectly sound in all parts, with strong ceiling and four-inch bottom plank.

She is provided with two bower chains—one of one inch, and one of fifteen-sixteenths inch—and two bower anchors of about seven hundred weight each.

And I therefore consider her to be a seaworthy and competent boat for the trade she is intended for on this coast.

Very respectfully, your obedient servant,

JNO. R. BUTLER, *Agent.*

THOS. A. ADAMS, Esq.,
President of the Board of Underwriters of New Orleans.

Copy from letter of Rich'd L. Robertson, inspector for underwriters, New Orleans, to J. R. Butler, agent, Point Isabel, dated New Orleans, August 15, 1855.

"By the report which the underwriters have of her (the Swan) from you, they will, no doubt, consider cargo shipped by her as insured."

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, July 15, 1855.

GENERAL: I had the honor to receive yesterday your communication of the 25th ultimo, relative to the new contract for the transportation of public supplies on the Rio Grande, and have this day addressed Lieutenant Garesché, acting assistant quartermaster at Fort Brown, a letter on the subject, of which the enclosed is a copy.

I have the honor to be, general, very respectfully, your obedient servant,

W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Department of Texas.

Major General T. S. JESUP,
Quartermaster General, Washington, D. C.

This and the annexed paper are true copies of the original and its enclosure on file in this office.

THOS. S. JESUP,
Quartermaster General.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, July 15, 1855.

SIR: By direction of the general commanding the department of Texas, I enclose herewith a copy of a letter of instructions received

yesterday from the quartermaster general, relative to a contract for the transportation of public supplies on the Rio Grande.

The general commanding the department directs me to say that you will suspend all action in regard to the new contract until you receive instructions from him, and will in the meantime continue to employ the steamboats of M. Kenedy & Co. on the terms and conditions of their old contract.

The general understands that the only person who put in a bid for the new contract, besides M. Kenedy & Co., is a Mr. Armstrong, and that his bid was less than that of M. Kenedy & Co., the old contractors. He directs that you will report to me whether Mr. Armstrong is a responsible man, and whether he is well prepared to carry his contract into effect; if he is himself the owner of property; if he is efficient and energetic; in fine, if he is capable of performing the contract as satisfactorily to the government as M. Kenedy & Co. have theirs for the last four years. The general does not care to know who his backers or sureties are, for his experience has convinced him that sureties, generally, on this frontier, are of very little account; but he desires you to report whether Mr. Armstrong is as responsible, as reliable, and as capable of carrying out his contract in good faith as the persons connected with the company of M. Kenedy.

The general also directs that you will report what boats Mr. Armstrong proposes to put on the Rio Grande—their names, capacity, and draught of water; how long they have been running, and where; their present value, and how they will compare with the boats of M. Kenedy & Co.; whether the boat he proposes to run from Brazos Santiago, around to the mouth of the Rio Grande, and thence to Fort Brown, is strong and seaworthy, and whether shippers in New Orleans can effect insurances of their goods on her.

The general further directs that you will send copies of the old contract with M. Kenedy & Co., and of the new one, if one has been executed, with Mr. Armstrong; also, copies of the late bids of M. Kenedy & Co. and Mr. Armstrong.

Very respectfully, your obedient servant,

W. W. CHAPMAN,
Acting Chief Assistant Quartermaster, Department of Texas.

Lieutenant J. P. GARESCHÉ,
Acting Assistant Quartermaster, Fort Brown, Texas.

A true copy.

W. W. CHAPMAN,
Assistant Quartermaster.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, June 25, 1855.

SIR: I herewith enclose a copy of a letter from M. Kenedy & Co., dated at Brownsville, Texas, June 10, instant, in relation to the contract about to be entered into for the transportation of public stores on the Rio Grande for the next two years.

You will inquire into the matter, and be careful that a contract is not made with irresponsible persons, or those not well prepared to carry it into effect.

I am, sir, &c.,

THOS. S. JESUP,
Quartermaster General.

Major W. W. CHAPMAN,
A. Q. M. U. S. A., Corpus Christi, Texas.

A true copy from the records of this office.

THOS. S. JESUP,
Quartermaster General.

QUARTERMASTER GENERAL'S OFFICE,
December 18, 1855.

GENERAL: On my return to this office, after an absence of more than two months, I found your letter of the 8th September, and the papers and correspondence relating to the contract made between Lieutenant Garesché and J. B. Armstrong; but in consequence of the necessity of preparing for the meeting of Congress, I was not able to devote even a moment's time to them until my report for the fiscal year had been presented to the Secretary of War. In the meantime I had received two letters of complaint from Mr. Armstrong, dated the 14th of November, one addressed to me, and the other to the Secretary of War, and referred by him to this office. In both Mr. Armstrong declares that he was and is ready to fulfil his contract agreeably to its terms, and complains that he has sustained a heavy loss by the suspending of the contract.

From a careful perusal of all the papers and correspondence in the case, I entertain some doubt whether Mr. Armstrong was ready at the time stipulated, and whether he exhibited the proper evidence of his ability to fulfil his contract as efficiently and promptly as the public interests required; but to place this department right before Congress and the country, this should not be a matter of mere inference, but of positively established fact.

If Mr. Armstrong was really ready at the time specified in the notice, and presented steamers secure and proper for the transportation of troops and military supplies on the route embraced in the contract, and could give reasonable assurances that he could replace either or both of his boats should either or both be disabled, he was legally entitled to the contract. Now, it was the duty of Major Chapman to ascertain these facts.

I do not consider the hostility of a citizen to myself or to any other officer of the department or of the government a sufficient or even a good reason for refusing to make a contract with him, provided he be the lowest bidder, and at the same time give reasonable evidence of his ability to comply with the stipulations of the contract which he proposes to make. If the lowest responsible bidder, he has a legal

right to the contract, whatsoever may be his personal relations with the officer who represents the public in making it.

The cost of the transportation of the army has been so enormous for the past year as to have attracted public attention. I shall be obliged to ask under that head for at least seven hundred thousand dollars, and for forage at least three hundred thousand dollars, for deficiencies. It is, therefore, absolutely necessary that I be able to show, when these matters come to be discussed in Congress, that the Quartermaster's department has in all cases employed those competent persons who were willing to do the work or furnish the supplies at the lowest rate.

If Mr. Armstrong was not ready nor qualified to go on, or if, having commenced the transportation stipulated, he failed, then a contract could have been legally made with another to complete the service, and any additional expense incurred could have been recovered from him and his sureties. Now, the public must bear the additional cost, and perhaps be mulcted in damages before the Court of Claims for the non-fulfilment of the contract.

I wish you to understand, general, that I do not mean to intimate that you and Major Chapman had not sufficient evidence before you to justify the suspending of the contract; but it is necessary, in order to place this department in the right, that I should have the same evidence here. There is no evidence in the papers sent by Major Chapman to this office to enable me to make out a clear case in favor of the public, should Mr. Armstrong appeal either to Congress or the Court of Claims.

Very respectfully, &c., &c.,

THOS. S. JESUP,
Quartermaster General.

Maj. Gen. P. F. SMITH,
Comd'g Texas Department, San Antonio, Texas.

A true copy.

E. S. SIBLEY, *Major and Quartermaster.*

QUARTERMASTER GENERAL'S OFFICE,
Washington City, December 17, 1855.

MAJOR: On the 14th instant I completed the examination of all the papers in relation to the contract entered into by Lieutenant Gareschè with J. B. Armstrong for transportation between Brazos Santiago and certain posts on the Rio Grande, which had been received in my absence. Mr. Armstrong, being the lowest bidder, was entitled to the contract if he presented himself at the proper time prepared to execute it. Under the instructions from this office of the 25th of June, the only questions for you to examine and decide under the contract, and the law which governs contracts, were—1. Whether Mr. Armstrong had given reasonable evidence of his capacity to enter upon, and promptly fulfil, the proposed contract; 2. Whether his steamers

were such as could be safely trusted to transport troops and supplies on so difficult a route as that from Brazos Santiago to Ringgold barracks; and, 3d. Whether, should either of his boats fail, he could, without delay, supply her place? These facts satisfactorily ascertained, he had a right, under the contract, to immediate employment.

A careful perusal of all the papers has left a doubt on my mind whether Mr. Armstrong ever was well prepared; but to put him in the wrong, and our department in the right, that should not be a matter of inference, but a positively established fact.

You will, therefore, carefully examine the whole subject; have Mr. Armstrong's boats inspected by competent persons, and ascertain satisfactorily whether he is competent to carry out such a contract as that which he has made with the public; whether his boats are suitable for the proposed route; and whether, should they, or either of them, fail, he is prepared at once to supply the place of either or both.

In the year terminating on the 30th of June the cost of transportation exceeded the appropriation more than seven hundred thousand dollars. I shall have to ask for a deficiency of that amount, and every case of contract above the lowest bid will be arrayed against us when the matter comes before Congress.

I am, sir, &c.,

THOS. S. JESUP,
Quartermaster General.

Major W. W. CHAPMAN,
Assistant Quartermaster, Corpus Christi, Texas.

A true copy from the records of this office.

THOS. S. JESUP,
Quartermaster General.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, December 19, 1855.

SIR: I have received your letter of the 14th ultimo, addressed to this office; also your letter of the same date, addressed to the Secretary of War, which has been referred by him to this office. Your letter of the 7th of August was received during my absence, and laid over until my return in November. A report had been required from Major Chapman in June on the subject of the contract. I have recently examined carefully all the papers and correspondence in relation to your contract, and I do not find satisfactory evidence either that you presented yourself in time, or that the steamers you proposed to employ were well adapted to the service on the difficult route embraced in the contract. These, however, were matters which Major Chapman was directed to ascertain and report to me. He has not done this satisfactorily; and I directed him, a few days ago, to report to me at once—1. Whether you were in fact ever ready; 2. Whether your boats were safe and suitable for the transportation of troops and public stores between Brazos Santiago and the ports on the Rio Grande em-

braced in the contract; and, 3. Whether, in the event of the failure of either of your boats, you could give reasonable assurance of your ability to supply its place promptly.

Lieutenant Garesché seemed to anticipate some delay in your preparations; for on the 21st of June he asked for instructions in such an event. Enclosed is a copy of the letter from this office in reply, dated the 12th of July.

It is very desirable to reduce the cost of transportation in Texas; but it is absolutely necessary that it be done without impairing the efficiency of the service on that frontier. In many of the items embraced in the contract you are much below the only other competitor for the contract; but in the two items of greatest expense, hay and grain, your bid is a very small fraction below that of Kennedy & Co.; in grain only one cent a bushel, and in hay only a quarter of a dollar a bale. Small, however, as this reduction is, it would give you a just claim to the contract if you were in fact ready at the time stipulated with safe and suitable transports, and were prepared to supply the place of either in the event of accident.

I enclose you a copy of my last instructions to Major Chapman.

I am, sir, respectfully, your obedient servant,

THOS. S. JESUP,
Quartermaster General.

Captain J. B. ARMSTRONG,
Brownsville, Texas.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, July 12, 1855.

SIR: I herewith transmit for the files of your office the following contracts made by officers of this department, viz:

Captain M. S. Miller, with James Maher.
Captain M. S. Miller, with B. H. Sothoron.
Lieutenant J. P. Garesché, with J. M. Armstrong.

Very respectfully, your obedient servant,

CHAS. THOMAS,
Deputy Quartermaster General, in charge.

J. M. BRODHEAD, Esq.,
Second Comptroller, Washington City, D. C.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, July 12, 1855.

SIR: Your letter dated the 15th ultimo, enclosing the offers received for transportation on the Rio Grande, and a contract made by you with J. B. Armstrong for the same, and that of the 21st reporting that you anticipate a great deal of delay on the part of the contractor in procuring suitable boats to enable him to fulfil his agreement, is received.

In reply to that of the 15th, I have to inform you that Mr. Armstrong must give good and sufficient bond for the due fulfilment of his con-

tract, that being the usual course, and more especially when a contract is made covering a long period of service. You will therefore call upon Mr. Armstrong to make and execute one agreeably to the usual form of such instruments. (Form was enclosed.)

In reply to that of the 21st, I have to state that Mr. Armstrong should be ready to comply with the terms of his contract on the day specified—that is, the 1st of August proximo; if he is not so prepared with his own boats, he should make timely arrangements with some one who has the means at hand. The public service must not be put to expense by a contractor failing to have ready the means to enable him to fulfil his engagements.

I have no authority to authorize any "grace" to be given in a case where the public will, or may, be a loser by it, nor to alter a written instrument after it has passed out of the possession of the parties to it. When a person makes proposals to render service or furnish supplies he should know at the time he submits them that in the event of his proposals being accepted, he was, or could be, prepared to fulfil them, and certainly before he entered into a written agreement; and an officer should not make a contract unless he is satisfied that it will be fulfilled in good faith in all its parts.

The necessary supplies for the posts on the Rio Grande must be forwarded as wanted, and we cannot wait for the contractor to determine when he will be prepared to commence operations. If Mr. Armstrong should fail to perform his part of his contract, either with his own means or those of others, it will have to be declared void, so as to leave the department free to make other arrangements. To pursue any other course would be unjust to other bidders, lead to abuses, and subject the department to the charge of favoritism to some and injustice to other individuals.

It is certainly desirable to break down an "existing monopoly" in all cases, but it must be done in a legitimate manner, and not in the way proposed. Therefore, should Mr. Armstong fail to enter upon the fulfilment of his contract, either by himself or others, you will make such temporary arrangements as may be best for the interests of the service until a new contract can be made.

I am, &c., &c.,

By order: CHAS. THOMAS,
Deputy Quartermaster General.

Lieut. J. P. GARESCHÉ, *4th Artillery*,
Acting Assistant Quartermaster, Fort Brown, Texas.

Admitted to be true copy.

JNO. D. McPHERSON,
Deputy Solicitor Court of Claims.

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Brown, Texas, April 10, 1855.

Sealed proposals for the transportation, *by water*, of army stores and supplies, &c., from Brazos Santiago, Texas, to Fort Brown, and thence

to Ringgold barracks, Texas, for the period of two years, commencing on the first day of August, 1855, will be received at this office until the first day of June next.

For Major W. W. CHAPMAN,
Assistant Quartermaster,
J. P. GARESCHÉ,
First Lieutenant 4th Artillery.

APRIL 14.

A true copy from the files of this office.
THOS. S. JESUP,
Quartermaster General.

FORT BROWN, *Texas, June* 15, 1855.

SIR: Herewith enclosed I have the honor to send you a contract which I have concluded with Captain J. B. Armstrong, of this place, for the next two years' transportation of stores on the Rio Grande, and with it the advertisement and bids.

In compliance with a public notice from me to that effect, given some time previous to the reception of any bids, Captain Armstrong holds himself prepared to give bond for the due fulfilment of his contract, should you require it. His sureties are Messrs. Grogan & San Roman, whom I have reason to believe to be two of the most substantial and reputable merchants on the frontier.

I beg leave to request that you will, in the event of your deciding to exact his bond, send me the form of one, drawn out as you would wish to have it.

I am, very respectfully, your obedient servant,
J. P. GARESCHÉ,
First Lieut. 4th Artillery, Acting Assistant Quartermaster.

Major General T. S. JESUP, U. S. A.,
Quartermaster General United States Army.

A true copy from the files of this office.
THOS. S. JESUP,
Quartermaster General.

FORT BROWN, *Texas, June* 21, 1855.

GENERAL: I have just had the honor of forwarding you a contract I have entered into with Captain J. B. Armstrong for the next two years' transportation of stores on the Rio Grande.

Captain Armstrong is so largely backed in this enterprise that I have no doubt of his ability to carry it out; but as he has a very brief space of time allowed him in which to purchase suitable boats and place them on this river, I anticipate a great deal of *delay* from this

cause, and I would, therefore, earnestly request that you would be pleased to transmit me by telegraph, through Colonel Tompkins, deputy quartermaster general, at New Orleans, your instructions for such a contingency.

I wish particularly to know, 1st, how long a grace I may accord him; and, 2d, whether, in case of any pressing necessity, I may, in the interval which elapses before he can get his boats out, employ the old company.

With regard to the first point, I beg to remark, that I think it in the interest of the government to extend every reasonable facility in their power to the new contractor. For, should he fail, I fear that no other effort will, for a long time, be made to break down the existing monopoly.

I am, most respectfully, your obedient servant,

J. P. GARESCHÉ,
First Lieutenant 4th Artillery, A. A. Q. M.

Major General T. S. JESUP, U. S. A.,
Quartermaster General.

P. S.—I have the honor to acknowledge the receipt, this day, of your two communications of the 4th and 5th instant.

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, June 25, 1855.

SIR: I herewith enclose a copy of a letter from M. Kennedy & Co., dated at Brownsville, Texas, June 10, instant, in relation to the contract about to be entered into for the transportation of public stores on the Rio Grande, for the next two years.

You will inquire into the matter, and be careful that a contract is not made with irresponsible persons, or those not well prepared to carry it into effect.

I am, sir, &c.,

THOMAS S. JESUP,
Quartermaster General.

Major W. W. CHAPMAN,
Assistant Quartermaster U. S. A., Corpus Christi, Texas.

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

QUARTERMASTER GENERAL'S OFFICE,
March 10, 1855.

SIR: As the present contract for the transportation of army stores from Brazos Santiago to Fort Brown, thence to Ringgold barrack

by water, will expire on the first of August next, you will advertise for proposals for the service for one or two years from that date.

Have the advertisements inserted in the papers at your place, in Galveston and New Orleans, and give until the first day of June next for persons to make proposals.

You are authorized to accept the lowest responsible bid, provided it be, in your opinion, fair and reasonable.

THOMAS S. JESUP,
Quartermaster General.

Brevet Major W. W. CHAPMAN,
Assistant Quartermaster U. S. A., Fort Brown, Texas.

A true copy.

W. A. GORDON,
Chief Clerk Quartermaster General's Office.

QUARTERMASTER GENERAL'S OFFICE,
Washington, June 4, 1856.

SIR: I am in receipt of the proceedings of the board of officers, of which you were a member, appointed by Special Orders No. 19, dated headquarters department of Texas, San Antonio, February 12, 1856, to examine into and report upon the means provided by certain contractors for the transportation of public supplies on the Rio Grande, together with copies of the inspector's certificates in regard to the steamers Swan and Guadalupe. After an examination of all the papers, I have concluded to direct the assistant quartermaster at Fort Brown to have the public stores transported by the boats of either line as may be most convenient and economical to the government; that is to say, you will forward the stores by either line which has a boat ready at the time without waiting for, or showing favor to, one or the other of the owners.

You will be careful to pursue a disinterested course in regard to the rival lines of steamers, so that neither party shall have any legitimate cause of complaint of favoritism being shown to either.

I remain, sir, very respectfully, your obedient servant,

THOS. S. JESUP,
Quartermaster General.

Lieutenant W. G. GILL,
Acting Assistant Quartermaster, Fort Brown, Texas.

Admitted to be true copy.

JNO. D. McPHERSON,
Deputy Solicitor of Court of Claims.

SPECIAL ORDERS No. 19.

[Extract.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, February 12, 1856.

* * * * * * * * * * *

II. A board of officers composed of Brevet Lieutenant Colonel Wm. Chapman, 5th infantry, First Lieutenant Frederick Myers, 5th infantry, and First Lieutenant William G. Gill, 4th artillery, will meet at Fort Brown, Texas, as soon as practicable after the receipt of these orders, to examine into and report upon the means provided by certain contractors for the transportation of government supplies on the Rio Grande. The board will refer to the extract from the letter of the quartermaster general, herewith submitted, and upon an inspection of the boats—in which, if deemed necessary and advisable, it may employ persons having a practical knowledge of such matters—and a careful examination of the whole subject, the board will report the facts and its opinion on the several questions presented; after which the members will return to their respective posts and duties.

By order of Brevet Major General Smith.

D. C. BUELL,
Assistant Adjutant General.

Major CHAPMAN.

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

Proceedings of a board of officers convened at Fort Brown, Texas, by virtue of the following orders, viz:

SPECIAL ORDERS No. 19.

[Extract.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, February 12, 1856.

* * * * * * * *

II. A board of officers composed of Brevet Lieutenant Colonel Wm. Chapman, 5th infantry, First Lieutenant Frederick Myers, 5th infantry, and First Lieutenant Wm. G Gill, 4th artillery, will meet at Fort Brown, Texas, as soon as practicable after the receipt of these orders, to examine into and report upon the means provided by certain contractors for the transportation of government supplies on the Rio Grande. The board will refer to the extract from the letter of the quartermaster general, herewith submitted, and upon an inspection of the boats—in which, if deemed necessary and advisable, it may employ persons having a practical knowledge of such matters—and a

careful examination of the whole subject, the board will report the facts and its opinion on the several questions presented; after which the members will return to their respective posts and duties.

By order of Brevet Major General Smith.

D. C. BUELL,
Assistant Adjutant General.

FORT BROWN, *Texas, March* 15, 1856.

The board met pursuant to the above orders. Present, all the members. The steamboats of the line to be inspected not being at Brownsville, and for the better examination of the "Swan," the outside boat of the line, the board adjourned to meet at Brazos Santiago on the 19th of March, 1856.

BRAZOS SANTIAGO, *March* 19, 1856.

The board met pursuant to adjournment. Present, all the members. It then proceeded to examine the steamboat "Swan," a boat of the *line* plying between Brazos Santiago and Brownsville, Texas.

The Swan was inspected, and to make the examination more complete, two competent persons, A. S. Ackley, captain of the schooner "Chrysolite," and S. K. Russell, first officer of the steamer "Nautilus," were employed to make a survey of her.

The Swan is a boat of 127 tons burden, as appears from her register, and was built at Jeffersonville, Indiana. She was originally intended for the river trade; and is over five years old, having been built in 1850.

Appended to these proceedings will be found the report of the above survey, a report of Captain Butler, insurance agent at Point Isabel, and also an inspector's certificate made for said Swan, marked Nos. 1, 2, and 3, respectively.

The board then adjourned to meet at Brownsville, to examine the "Guadalupe" upon her arrival at that point.

BROWNSVILLE, *Texas, March* 23, 1856.

The board met pursuant to adjournment. Present, all the members. It then examined the steamboat "Guadalupe," a boat of the line to be inspected, and plying between Brownsville and Ringgold barracks, Texas.

It was found impossible to find any disinterested persons to inspect said boat, all *competent* persons in the neighborhood being more or less, directly or indirectly, connected or interested in the rival lines of Captains Armstrong and Kennedy.

In consequence of this difficulty the board determined to rely upon its own observation.

The Guadalupe, as appears from her register, was built at West Elizabeth, Pennsylvania, in June, 1852, is of 137 tons burden, and was intended for the river trade.

No evidence of decay could be discovered in her; but judging from her general appearance, and from the fact of her having apparently undergone many repairs, the board is of opinion that she is not of suitable strength to fulfil her engagements on the Rio Grande. Appended is an inspector's certificate for said boat, marked No. 4.

Respecting the general condition of Mr. Armstrong's line of boats, the board reports as follows:

It is of opinion that the Swan, from the size and build of the boat, and from the fact of her having been intended for an inland trade, as appears from her inspector's certificate, is unfitted to run between the Brazos and the mouth of the Rio Grande. This portion of the route is the most difficult to traverse, from its being on the Gulf, and on a coast liable to sudden and severe storms. The dangerous character of the breakers on the bars of both the Brazos and Rio Grande is such that none but the strongest possible boats should be employed in the trade.

The Swan is also unfitted for lightering vessels outside; having side wheels and guards, it would be difficult, if not impossible, for her to lie alongside of a vessel in the swell usually found upon the coast.

The board has had but little experience in determining the qualities of steamboats; but as far as they can ascertain, they conceive the boats at present in Mr. Armstrong's line unsuitable for the purpose employed, and they would feel reluctant to have valuable and uninsured government property transported on them, and more so, to embark officers and men on them.

At present there are but two boats in the line, and in case either or both were injured or lost, months might elapse, during the prevalence of "northers," before they could be repaired or replaced. As to the ability of Mr. Armstrong's supplying an additional boat, in case one should be lost, the board could not satisfactorily determine.

There are no barges belonging to this line, should it become necessary, at a low stage of the river, to employ them in carrying freight.

The Swan and Guadalupe arrived at Brazos Santiago on the 2d and 22d of August, 1855, respectively.

Finally, the board is of opinion:

1. That Mr. Armstrong has not given reasonable evidence of his ability to carry out the proposed contract.

2. It is of opinion that the boats Captain Armstrong has at present in the trade are not such as can be safely relied upon in the transportation of troops and supplies from Brazos Santiago to Ringgold barracks, Texas.

3. Should either of his boats fail, in the opinion of the board he could not supply the place within reasonable time.

WM. CHAPMAN,
Captain 5th Infantry and Bvt. Lieut. Col. U. S. A., President.
FRED'K MYERS,
First Lieut. 5th Infantry.

W. G. GILL,
First Lieut. 4th Artillery, Recorder.

The board having no further business, adjourned *sine die*.

WM. CHAPMAN,
Captain 5th Infantry, Bvt. Lieut. Col. U. S. A., President.
W. G. GILL, *First Lieut. 4th Artillery, Recorder.*

A true copy.

E. S. SIBLEY,
Major and Quartermaster.

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, February 25, 1856.

GENERAL: I had the honor to receive on the 7th of January your letter of December 17, relative to the contract of J. B. Armstrong, and on the 10th of January I addressed a letter to General Smith's headquarters, (of which the enclosed is a copy,) requesting that a board of officers might be convened on the Rio Grande to examine the subject, and report answers to your questions.

Last evening I received the enclosed order for the board, and as soon as I receive a copy of the record of its proceedings I will make the report required in your letter of December 17, 1855.

I have the honor to be, general, very respectfully, your ob't serv't,
W. W. CHAPMAN,
Brevet Major and Assistant Quartermaster.

Major General T. S. JESUP,
Quartermaster General, Washington, D. C.

A true copy.
E. S. SIBLEY, *Major and Quartermaster.*

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, January 10, 1856.

MAJOR: I have the honor herewith to transmit a letter received from the quartermaster general, relative to a contract made by Lieut. Garesché with J. B. Armstrong, for the transportation of public stores from Brazos Santiago to Fort Brown and Ringgold barracks, and in which I am directed "to have Mr. Armstrong's boats inspected by competent persons, and ascertain satisfactorily whether he is competent to carry out such a contract as that which he has made with the public;" whether his boats "are suitable for the proposed route; and whether, should they, or either of them, fail, he is prepared at once to supply the place of either or both."

To enable me to arrive at these facts, (in a manner which would no doubt be the most satisfactory to all concerned,) and to make a report to the quartermaster general based upon them, I respectfully request that a board of officers may be convened on the Rio Grande to examine the subject, to inspect the boats, with authority to employ in the inspection persons having a thorough knowledge of steamboats, if it is deemed advisable, and to answer fully all the inquiries contained in the above extract from the letter of the quartermaster general.

Very respectfully, your obedient servant,
W. W. CHAPMAN,
Brevet Major and Assistant Quartermaster.

Major D. C. BUELL,
A. A. G., San Antonio, Texas.

A true copy.
W. W. CHAPMAN,
Assistant Quartermaster.

A true copy.
E. S. SIBLEY, *Major and Quartermaster.*

ASSISTANT QUARTERMASTER'S OFFICE,
Corpus Christi, Texas, May 15, 1856.

GENERAL: I have the honor herewith to transmit the record of the proceedings of the board of officers referred to in my letter of February 25, 1856, which will supersede the necessity of any report from me.

You will perceive, general, from this record, that the action of General Smith in the matter, by his orders communicated through me, was not only judicious, but will, no doubt, prove highly beneficial to the public interest.

I have the honor to be, general, very respectfully, your ob't serv't,
W. W. CHAPMAN,
Brevet Major and Assistant Quartermaster.

Major General T. S. JESUP,
Quartermaster General, Washington, D. C.

A true copy:
J. SIBLEY, *Major and Quartermaster.*

TREASURY DEPARTMENT,
Third Auditor's Office, November 14, 1857.

SIR: In reply to your letter of the 27th ultimo, I have to state that it appears from an examination of quartermasters' accounts in this office, that M. Kenedy & Co. received from the United States for freight on stores up and down the Rio Grande, between Brazos Santiago and Fort Brown, and between Fort Brown and Ringgold barracks, from July 1, 1855, to June 30, 1857, the sum of $25,300 22; and for transportation of troops, between the same points during the same period, $4,258.

Large sums are found to have been paid to R King and others, for similar services at the same time and places.

I am not aware that there is any information in this office relating to the claim stated by you to be now pending in the Court of Claims, in the name of James B. Armstrong, for damages for failure of the quartermaster's department to furnish freight for his boats between the points and at the periods before mentioned.

Very respectfully, your obedient servant,
ROBERT J. ATKINSON, *Auditor.*

JOHN D. MCPHERSON, Esq.,
Deputy Solicitor of the Court of Claims,
Washington, D. C.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, December 19, 1857.

SIR: Under the call from the Court of Claims, referred to this office on the 14th instant, I have the honor to submit all the papers required by the Court of Claims so far as they can be furnished by this office.

There was no letter by me written to General Smith in June, 1855, or at any other time, on the authority of which a board of officers was convened to examine the boats of J. B. Armstrong. A letter addressed from this office to Major Chapman, directing him to examine into the matter, is supposed to be that which is desired. I have caused a copy to be made of it, which will be found herewith.

There is no copy of a letter in this office, dated July 14, 1855, or of any other date, from Major Chapman to General Smith, requesting a suspension of the contract with J. B. Armstrong; and Major Chapman, now here, states that no such letter was written. A letter from Major Chapman to Lieutenant Garesché, instructing him by direction of General Smith to suspend the contract, is supposed to be the letter required, and a copy of it is submitted herewith.

The papers all have the necessary certificates attached, and only require the seal of the War Office to perfect them.

I return the letter of the chief clerk of the Court of Claims, with the order of the court; and I have the honor to be, sir, your obedient servant,

TH. S. JESUP,
Quartermaster General.

Hon. J. B. Floyd,
Secretary of War, Washington City.

Treasury Department,
Second Comptroller's Office, November 4, 1858.

Sir: Agreeably to your verbal request made to me this morning, I enclose herewith a copy of the letter of the quartermaster general, officially transmitting, for the files of this office, the contract of Lieutenant J. P. Garesché with J. B. Armstrong.

You will perceive that the letter of the quartermaster general designates the contractor as J. M. Armstrong.

The contract itself, and the record of this office, however, shows this to have been a mere clerical error, and that the name should have been, in the letter transmitting the contract, J. B., instead of J. M. Armstrong.

Respectfully, sir, your obedient servant,

J. MADISON CUTTS,
Comptroller.

John D. McPherson, Esq.,
Assistant Solicitor Court of Claims.

Quartermaster General's Office,
Washington, November 5, 1858.

Sir: Your letter of 31st ultimo, asking for copy of letter from quartermaster general to Lieutenant Garesché, dated March 10, 1855, is received. No such letter was written on the date and subject re-

ferred to, but *Major Chapman* was that day authorized to issue proposals for a contract "for transportation on the Rio Grande," and subsequently, (July 12, 1855,) Lieutenant Garesché was written fully upon this subject. If you desire copies of *these* letters they will be furnished.

Very respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

J. D. McPHERSON, Esq.,
Deputy Solicitor of Court of Claims, Washington.

OFFICE OF SOLICITOR OF COURT OF CLAIMS,
November 8, 1858.

GENERAL: Lieutenant Garesché, in his deposition in the case of Jas. B. Armstrong, says he entered into the contract under authority received from the quartermaster general, in a letter dated the 10th of March, 1855. I have been requested by the judges to procure from your office a copy of the letter so referred to. Presuming that the letter of that date to Major Chapman was the one referred to by Lieutenant Garesché, I respectfully request a copy. Your letter of July 12, 1858, is already in evidence.

Very respectfully,

J. D. McPHERSON.
Deputy Solicitor.

Major General JESUP,
Quartermaster General U. S. Army.

QUARTERMASTER GENERAL'S OFFICE,
Washington, November 10, 1858.

SIR: Your letter of the 8th instant is received, and the enclosed copy of the letter to Major Chapman, and which authorized the making of a contract for transporsation, &c., on the Rio Grande, is furished for the use of the Court of Claims.

Very respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

J. D. McPHERSON, Esq.,
Deputy Solicitor of Court of Claims, Washington, D. C.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, November 17, 1857.

SIR: I have received your letter of yesterday. The papers you desire in the Armstrong case are voluminous, and it will take some

days to copy them. The copies will be sent to you so soon as they can be prepared.

Major Chapman, who is probably better acquainted with the whole affair than any one else, has been ordered hither, and it is believed will arrive in a few days. It might be well to take the testimony of Major Chapman on the subject, as well as of General Smith, who is now here, and who ordered the contract of Mr. Armstrong to be set aside.

I am, sir, respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

J. D. McPHERSON, Esq.,
Deputy Solicitor of Court of Claims, Washington City.

TREASURY DEPARTMENT,
Third Auditor's Office, November 20, 1858.

SIR: I have the honor to transmit herewith a statement showing the quantities and descriptions of articles transported on the Rio Grande river in Texas, during the period from August 1, 1855, till July 31, 1857, as shown by the accounts of quartermasters stationed at the different military posts on the Rio Grande, prepared in accordance with the reference from your department of an order of the Court of Claims in the case of James B. Armstrong *vs.* The United States.

This information has been compiled from the various bills of lading, and covers, I am informed by the attorney for Armstrong, the points desired. It would be a work of great labor and consume much more time to furnish full copies of the bills, lading, &c. I am not aware of any further information in this office relating to the claim.

The order of the court is herewith respectfully returned.

With great respect, your most obedient servant,

R. J. ATKINSON, *Auditor.*

Hon. HOWELL COBB,
Secretary of the Treasury.

WASHINGTON, *November* 3, 1859.

SIR: I herewith enclose you a statement made from your office on a requisition from the Court of Claims, showing the quantity of goods and persons transported on points upon the Rio Grande, during the period from August 1, 1855, to August 1, 1857.

The court have required me to designate specifically what portion of this transportation was done by J. B. Armstrong, or J. B. Armstrong & Co., and in order that I may do this I request that you will have the statement examined and a supplement made out, showing

the amount paid to said Armstrong, and also to all other persons other than Messrs. Kennedy & Co.

Your obedient servant,

J. D. B. DeBOW,
Counsel for J. B. Armstrong.

Hon. R. J. ATKINSON,
Third Auditor of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, November 4, 1859.

SIR: Your letter of the 3d instant, with enclosed statement, has been received. Below, please find the information sought.

Statement of freights, &c., other than to Kennedy & Co., included in the list furnished from this office at the instance of the Court of Claims, &c.

J. B. Armstrong, September and November, 1855, transportation of three soldiers, &c	$17 00
C. Blakeman, December, 1856, transportation of forage	330 00
H. B. Bee, January, 1857, transportation of subsistence stores	74 09
M. Gonzales, January, 1857, transportation of subsistence stores	161 44
C. Lopez, January, 1857, transportation of subsistence stores	116 08
Steamer Ranchero, January, 1857, transportation of 350 feet stovepipe	10 00
Steamer Ranchero, January, 1857, transportation of thirteen men, &c	56 00
R. King, November, 1856, transportation of 122 soldiers, &c.	950 00
R. King, November, 1856, transportation of company B, 4th artillery	1,200 00
R. King, November, 1856, transportation of two companies, L and M, 1st artillery	950 00
R. King, April, 1857, transportation of company C, 1st artillery	800 00
R. King, April, 1857, transportation of equipments for artillery company, &c	594 07

The original statement is herewith returned to you.

Very respectfully,

R. J. ATKINSON, *Auditor.*

J. D. B. DeBow, Esq.,
Counsel, &c., Present.

TREASURY DEPARTMENT,
Third Auditor's Office, December 7, 1859.

SIR: I have received your letter of the 30th ultimo, referring to mine of the 4th to Mr. DeBow, "in the matter of the Armstrong

claim." After stating that other freight than that named in my letter to Mr. DeBow "is known to have been given to Armstrong," you ask me to "see whether the freight described or indicated (below) is included in your (my) report to the court of November, 1858; and if so, by whom it was transported, *i. e.*, whether by Armstrong's boats or others.

"1. Lieutenant Garesché, between August 1, and September 30, 1855, says he *once* gave freight to Armstrong's boat.

"2. Lieutenant L. O. Morris, in the fourth quarter of 1856, caused *troops and baggage* to be transported from Brownsville to Ringgold barracks, viz: November 20, 1856, 1 officer, 24 soldiers, 2 laundresses; and sent forage, viz: December 10, 2,000 bushels oats, and 15 bales hay."

In reply, I beg to say that I think you will find the freight indicated in your letter, embraced in my report of November, 1858.

Lieutenant Garesché's statement that "he *once* gave freight to Armstrong's boat, &c.," is confirmed by an examination of his papers on file, showing that he paid J. B. Armstrong on the 30th of September, 1855, $9 for the "transportation of three soldiers, with one months rations, from Fort Brown to Brazos Santiago, Texas." This amount, viz: $9, is a portion of the $17 embraced in my letter to Mr. DeBow, November 4, 1859, erroneously quoted by you as "transportation of 15 bales hay.'"

As to Lieutenant Morris's statement, it does not appear that he made any payment to Armstrong during the period named. The freight enumerated by him appears in his abstract as follows, viz: "November 20, 1856.—Paid to *James Forrest* for transportation of 1st Lieutenant J. W. Robinson, from Fort Brown to Ringgold barracks, Texas, $8; transportation of 12 men at $3, $36, being a detachment of Captain Ricket's 1st artillery company, relieved from duty at this post; also for transportation of 1 man of company E, 1st artillery, and 12 men and 2 laundresses of 2d cavalry, at $3, $45—in all $89.

"December 13, 1856.—Paid to C. Blakeman for transporting 2,000 bushels oats, at 15 cents per bushel, $300; and 15 bales hay, at $2 per bale, $30—total $330." This voucher is supported by bill of lading of "steamer Swan, whereof Blakeman is master, &c.;" voyage, Brazos to Fort Brown. The latter payment is embraced in my letter to Mr. DeBow, November 4, 1859, but the payment to Forrest is not. There is nothing on file in either case to show that Armstrong was interested in the freight.

Very respectfully,

R. J. ATKINSON,
Auditor.

JOHN D. MCPHERSON, Esq.,
Deputy Solicitor, Court of Claims.

ADJUTANT GENERAL'S OFFICE,
Washington, July 8, 1859.

SIR: At the request of Mr. DeBow, I transmit to you the following information:

Company B, 4th artillery, left Fort Brown, Texas, for Brazos Santiago, en route to Fort Leavenworth, Kansas Territory, November 23, 1856; strength, 4 officers and 55 men.

Companies K and M, 4th artillery, left Fort Brown for Brazos Santiago, en route to Florida, November 19, 1856; strength, 10 officers and 123 men.

Company D, 4th artillery, left Ringgold for Brazos Santiago, *via* Fort Brown, en route to Florida, November 8, 1856; strength, 4 officers and 35 enlisted men.

Companies A, F, H, and I, 5th infantry, left Ringgold barracks, November 2, 1856, *via* Fort Brown, for Brazos Santiago, en route to Florida, arrived at Brazos Santiago, November 5, 1856; company D, 5th infantry, left Ringgold barracks, Texas, *via* Fort Brown, for Brazos Santiago, en route to Florida, November 2, 1856; left Fort Brown, and arrived same day (November 5, 1856) at mouth of the Rio Grande; distance about 25 miles by land; strength of the above five companies of 5th infantry, 222 officers and men.

Companies B, C, E, G, and K, 5th infantry, left Ringgold barracks, *via* Fort Brown, for Brazos Santiago, en route to Florida, November 8, 1856; companies B, C and E, left Fort Brown and arrived at the mouth of the Rio Grande, November 13, 1856, *i. e.*, same day; company G left Fort Brown November 13, 1856; company K left Fort Brown, November 13, 1856, and reached Brazos Santiago same day; the strength of the above five companies was 206 officers and men.

Company C, 1st artillery, left Ringgold barracks, *via* Fort Brown, for Brazos Santiago, en route to Baton Rouge barracks, Louisiana, April 24, 1857, and arrived at Brazos Santiago, Texas, April 27, 1857; strength, 4 officers and 65 enlisted men.

Companies L and M, 1st artillery; strength, 173 officers and men, left Fort Dallas, Florida, on board transport steamer "Suwanee," November 3, 1856, and arrived at Fort Brown, Texas, November 18, 1856.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Assistant Adjutant General.

J. D. MCPHERSON, Esq.,
Solicitor Court of Claims.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, November 20, 1860.

SIR: I have received your letter of the 17th instant, with its enclosure, relative to the transportation of troops in 1856, from Fort Brown to Brazos Santiago, Texas; and in reply have to say, that it

appears the 5th infantry were transported by water from Ringgold barracks to Brazos by contract with M. Kennedy, & Co., but the names of the steamboats are not given; that a contract was made with R. King for the lighterage of this regiment at the Brazos to the ship Julia G. Tyler, chartered to transport them to Punta Russa, Florida, but whether they were taken from the steamboats to the ship immediately on their arrival, or were landed and subsequently lightered, is not shown. Colonel C. A. Waite, the commanding officer of that regiment, (now of the 1st infantry,) could give you positive information upon that point. Companies B, K and M, 4th artillery, were transported by water from Fort Brown to the Brazos, by contract with R. King, but the names of the steamboats are not given, and there is no evidence on record here to enable me to say whether they landed at the Brazos or not. The other companies mentioned in the letter of the adjutant general do not appear to have been furnished with water transportation, and the presumption is that they marched down.

The letter of the adjutant general is herewith returned.

I am, sir, your obedient servant,

J. E. JOHNSTON,
Quartermaster General.

J. D. McPherson, Esq.,
Deputy Solicitor Court of Claims, Washington.

IN THE COURT OF CLAIMS.

ARMSTRONG'S ADMINISTRATORS *vs.* THE UNITED STATES.

Plaintiff's brief.

This is a case for the recovery of the sum of two hundred thousand dollars, which the plaintiff claims that he has lost in actual damages and deprivation of profits, in consequence of the violation by the defendants of a contract entered into by them with him.

The contract, which is filed among the papers and other evidences submitted, was entered into on the 14th day of June, 1855, between the parties, and was for the transportation of men, provisions, munitions of war, etc., upon the Rio Grande, for two years from the 1st of August, 1855.—(See 1.)

The defendants do not set up any objection to the regularity, legality, or sufficiency of the contract which was entered into on their part by an agent, properly authorized and empowered to act for them, under instructions which were regularly carried out. The testimony of the said agent (Lieutenant Garesché) is on file, and entirely sustains this position.—(See J.)

The letter of General Jessup, quartermaster general of the United States army, December 17, 1855, (No. 2,) is distinct in referring to this contract as an existing one. It says: "Mr. Armstrong, being the lowest bidder, was entitled to the contract if he presented himself

at the proper time," etc. The letter of the deputy quartermaster general, Colonel Thomas, July 12, 1855, is to the same point.—(No. 3.) See also the letter of General Jessup to Captain Armstrong, December 19, 1855, (No. 4,) and the letter of the same party to General Smith, December 18, 1855, (No. 5,) in which this passage occurs: "Now, the public must bear the additional cost, and perhaps be mulcted in damages before the Court of Claims for non-fulfilment of the contract." In the letter from Colonel Thomas, above referred to, July 12, 1855, (No. 3,) Lieutenant Garesché, who signed the contract for the government, is required to take from Armstrong "good and sufficient bond for the due fulfilment of his contract," etc. The testimony of Lieutenant Garesché shows why such bond was not taken, though offered, and also its efficiency, etc.—(See J.) Such bond, however, was not required in the proposals for the contract, nor asked from the previous contractors, nor could its absence invalidate the instrument.

The grounds of defence which seem to be set up, as far as they can be deduced from the evidence of the defendants, are:

1. That plaintiff was not ready at the time specified to perform his part of the contract.

2. That if ready at the time, plaintiff had not provided such vessels as were sufficient or adapted to the service.

3. That, admitting plaintiff's right to recover, it cannot be for the whole time of the contract, inasmuch as defendants were not in default during the whole of that time.

These positions will be examined in their order.

I. *That plaintiff was not ready.* Defendants' testimony on this point is contained in a report of a board of officers.—(14) This board state that plaintiff's boats were at the Brazos on the 2d and 22d of August, but the court will in the further progress of the case have abundant reason to receive very cautiously the judgment of the board. They do not, however, say that the boats were not in time for any required service. The testimony of Charles E. Caswell, who was clerk of one of the boats, (the Swan,) is, that she was at the Brazos on the first of August, the proper day, prepared to transport government supplies, and that the Guadalupe arrived soon after, and that no freight was offered to either vessel.—(15 and 15½.) Lieutenant Garesché, one of the officers of the defendants, testifies that plaintiff was in fact ready, and removes every ground of doubt on this point. But, under all the circumstances of the case, it would come with very bad grace for the defendants to set up such a plea.

It appears from the evidence submitted, that soon after the signing of the contract, and before the time fixed for its execution, an order was issued by the defendants to suspend all action under it. It also appears that a rival and unsuccessful contracting firm, Kennedy & Co., wrote to the quartermaster general at Washington, (see this fact stated in the letter of that officer dated June 25, 1855, No. 16,) raising by implication a doubt of the plaintiff's capacity, etc., and that immediately after, that officer instructed Major Chapman to be careful about employing irresponsible persons. On the 15th of July, fifteen days before the date fixed for the operation of the contract,

Major Chapman, acting on the part of the general commanding the division of Texas, orders Lieutenant Garesché "to suspend all action in regard to the new contract, and in the meantime to employ the steam-boats of Messrs. Kennedy & Co."—(No. 17.) A few days after the receipt of this order, Lieutenant Garesché received a letter from the quartermaster general at Washington, dated July 12, 1855, (No. 3,) ordering him to take security from Armstrong, which was a virtual recognition of his contract from the highest authority; but this officer explains in his testimony that he did not do so because he had already been ordered by his immediate superior to "suspend all action in regard to the new contract," and to report all the facts to Washington and await further orders from that quarter. Now it was physically impossible for this "report," ordered on the 15th of July, to be made, and new instructions to be returned upon it before the 1st of August, the time fixed for the contract. The shortest time in which a communication could pass from the Rio Grande to Washington, and a reply be received to it, would be thirty days, which would have brought the time to the 15th of August, fifteen days after the contract was to have gone into effect.

Under such circumstances, had plaintiff even failed to have his boats ready at the time, he would have been legally exonerated.

But admitting, which is not proved, that there was any delay in plaintiff's boats, it does not appear that the defendants sustained any damage from such delay, inasmuch as the boats under the orders to give all of the freight to Kennedy & Co. could not have been used, and plaintiff's rights under his contract would have been perfect had he furnished no boats at all. Had his boats presented themselves on the 1st of August, all the testimony is clear that no freight could have been given to them. It is for the defendants, under the circumstances, to show that on the 1st day of August they were ready to give freight to plaintiff, and that he was unprepared to receive the same; but this is not attempted.

II. *That the plaintiff did not furnish such vessels as were implied in the contract, and adapted to the required service.* Defendants on this point set up a report made by a board of their own officers after examination of the vessels.

Before looking into this report, it may well be asked what right one of the parties to a contract has to set it aside upon their own report and understanding of facts, without an equal representation of those adversely interested? An *ex parte* report can be of no value. The proper examination would have been by experts skilled in matters of this sort, and not by army officers, who must be supposed to know nothing at all about them.

This report, whatever it is, is set up against the opinions of, first, the agent of the underwriters; second, the United States inspectors of steamboats; third, experienced seamen, whose testimony is all on file, and all goes to show that the vessels were in every respect safe, reliable, and adapted to the service. It is also set up against the facts, likewise in evidence, that the government did actually offer to employ the same boats a year afterwards for the identical service, and that

these boats are now, two years and a half afterwards, purchased by and in the service of the contractors who are performing the same service.

The only evidence a contractor can be required to give that his boats are good and seaworthy, and adapted to perform the required service, must be the opinion of the underwriters, which always controls the mercantile interests, and is acted upon by the government, and the certificate of inspectors empowered by act of Congress to examine and certify as to all vessels. The agent of the underwriters, John M. Butler, certifies (and his certificates are admitted as evidence by the defendants) under date of September 6, 1856, (No. 6,) that the steamboat Guadalupe, one of the boats offered by the plaintiff, was a sound, safe, and sea-worthy boat for the trade in which she is engaged, *i. e.*, all parts of the Rio Grande to the mouth, and that she ranks for insurance as "a first class boat." The same certificate in regard to the Swan, the other boat offered, is given by the agent August 18, 1855, viz: "That she is sea-worthy and competent for the trade she is intended for on this coast."—(6½.) This certificate is attested by the proper officer of the government, and was made at the time the Swan was offered to perform the contract, and with direct reference to her capacity to do so, and was transmitted to the department at Washington. These certificates are further established by the testimony of the agent, Captain Butler, taken by consent by a commissioner of the Court of Claims, on the 2d October, 1857, and placed on file among the papers of this case, (No. 7.) The reports of the United States inspectors, in regard to the Swan, (No. 8,) herewith filed, are dated: first, 3d of March, 1855, showing her capacity for the Gulf and river trade from Galveston to the Brazos river, &c.; second, 5th August, 1855, (No. 9,) showing her capacity for the Rio Grande from Brownsville to Brazos Santiago, and also to the ports and waters usually navigated by boats of the same class. The certificates of the Guadalupe are dated October 2, 1854, and 5th August, 1856, and are equally clear in regard to the character of the Guadalupe, either for the Galveston or the Rio Grande trade, (10 and 11.) These certificates of August 5th are admitted as evidence by the defence. A certificate of date March 18, 1856, (No. 12,) in regard to the Swan is equally satisfactory, and is made by two experienced seamen, appointed by a board of officers detailed by the government for that purpose.

The underwriters' certificate as to the sufficiency of the Guadalupe and Swan would be considered sufficient in all contracts with regard to vessels, and the government is to be in no better condition than private contractors. Private interest, too, is always more keen than public. But let us examine a little into this matter of the board. On the 10th January, 1856, more than five months after the contract was to go into effect, Major Chapman, assistant quartermaster on the Texas frontier, convenes a board of officers acting under instructions from the quartermaster general, "to examine Mr. Armstrong's boats, if he is competent to carry out the contract, whether his boats are suitable, and whether, should they or either of them fail, he is prepared at once to supply the place of either or both." Now, why ask these questions? are they usual? Does not the inquiry denote a foregone

conclusion? Were these mentioned in the published proposals, &c., or with what grace do they come, after the contract is signed, (No. 13,) and would not the bond which was offered have sufficed?

The commission to examine consists of a lieutenant colonel of infantry, (Colonel Chapman,) and two lieutenants of infantry and artillery. What is remarkable here is that Chapman becomes president of the board—he who has suggested the doubt. Could he have been put on that board himself, when the request came from the quartermaster to have the boats "examined by competent persons?"

Major Chapman, however, asks if it is advisable to consult others, and he is instructed, if it is *advisable*, to do so. Read his letter of May 15, 1856, transmitting the action of the board, and note its exultant tone.—(A.)

But these commissioners enter upon their work, and make examination of the Swan, and as they say, "to make the *examination more complete*," call in two experienced seamen, whose report, in every respect, shows the sufficiency of that vessel.

In regard to the Guadalupe not finding any persons not interested in the rival lines, they rely on their own observation, as they tell us, and the only argument presented against her is from general appearance, and from the fact of her "*apparently* having undergone many repairs!" Now, could anything be more ridiculous than such a report? But, notwitstanding they are constrained to transmit a favorable report, in regard to the Swan, of experienced seamen, this zealous board determine that she is unfitted to run between the Brazos and the Rio Grande! This, too, when it appears from the papers that they left the examination *entirely* to seamen, who had pronounced otherwise. It may be well to notice their language in regard to the Guadalupe, namely, that "they could not get good inspectors for that boat." They tell us that the Swan is unfitted to run between the Brazos and the mouth of the Rio Grande, because of her having been intended for an *inland* trade, and could not lighter vessels outside, because it would be difficult, if not impossible, for her to lie alongside, from having side wheels.

The board further complain that there are no barges; but this appears nowhere as a part of the contract, and at all events it was a want easily supplied.

After stating in the report that they could not satisfactorily determine whether Captain Armstrong could supply an additional boat in case one was lost, they state that he could not, almost in the same breath, by an extraordinary inconsistency. By another extraordinary leap in their conclusions, they report that the boats are not sufficient to transport from Brazos Santiago to Ringgold's barracks, although all their arguments had relation to points the other side of these.

Now, by the contract the vessels were to receive freight at the wharves explicitly, and were not to go to sea; and not one word is said about lighters. Section 7 does not enlarge the contract, but simply specifies what the parties shall receive in case they undertake to do more than they contracted for.—(See Report of Board, No. 14.)

This report of the board, however, seems not to have been accepted by the government, as is seen in the letter of the quartermaster gen-

eral, acknowledging its receipt June 4, 1856, and ordering the freight to be transported on the boats of either line which might be most convenient and economical, avoidng all partiality or favor, and giving no cause of complaint, (No. 18.)

But upon the points of the lighters, extra steamers, barges, and incapacity to go out to sea, &c., which are magnified into such importance by the board, we have—

1. The testimony of Lieutenant McGill, one of the members of the board, taken for this court, in which he states that he was assistant quartermaster during the winter and part of the spring of 1855–'56, the very worst season upon that coast, (F,) and that during that time no government freight was lightered outside by steamers, and that no barges were used. He says, also, that Kennedy & Co., to whom the business was awarded, had but two steamers in service.—(See I.)

2. The testimony of Lieutenant Solomons (I) who acted in the same capacity in the fall of 1855, and the summer and fall of 1856, who states distinctly that barges were not used, but that if wanted they were readily obtainable from the government. Does not remember the amount, and does not say that *any* freight was lightered outside, and does not answer the question, when fairly asked, if the steamers of Kennedy & Co., which went outside, had side wheels? There is other evidence that they had. Mr. Bloom, a merchant of Brownsville for nine years, says that none other than high-pressure side-wheel boats have ever been engaged on that frontier.—(See 20½.)

3. Mr. Kingsbury (see F) says that the boats of Armstrong, which were rejected by the government, have since been in the use of the parties performing the same service for the government, and that they are now in such use.

4. The testimony of Charles E. Caswell (15) who has been employed on both vessels, and who says they had been thoroughly repaired and made "as good as new," and in first rate sea order; that they remained in that condition during the year 1855–'56; that the Swan, on several occasions, made trips outside of the bar, seaward, when the steamer Grampus, in which the government freight was habitually carried, did not venture out; and on one of these occasions, in addition to having a considerable quantity of freight on board, did receive on board from a Mexican vessel at sea four hundred Mexican soldiers, their officers and baggage, arms and stores, and transport the same into the Rio Grande and as far as Matamoras.

But the testimony upon this point is so conclusive that it does not leave the defendants a plank to rest upon.

III. *That partial performance of the contract was offered by defendants.* The evidence is that in the autumn of 1856, one year and a half after the signing of the contract, freight was offered to plaintiff, which was refused.

There is no evidence to show that any freight was offered during the first year of the contract, but the very reverse is proved by all of the evidence. Lieutenant Solomons who was acting assistant quartermaster in October and a part of November, 1855, and from May to December, 1856, says (see I) he offered freight in 1856, but cannot

recollect the month, and therefore the presumption is the latest time, unless the whole be rejected for vagueness, inasmuch as he seems to say in another place he did, during the whole of the period specified, offer frieght.

A little further, however, he fixes the time when he offered freight as in October or November, 1856, and says that the agent, San Roman, refused any freight unless he could get the whole.

Lieutenant O. Morris, assistant quartermaster, who succeeded Solomons, says that he offered freight in November and December, 1856, and that a small amount was accepted at "current rates and not under any supposed contract," and that plaintiff's agent expressed a willingness hereafter to take such freight as might be offered by the government. Notwithstanding this, he states that he offered no freight after December, 1856, though his term of service extended to May, 1857, giving as a reason what he had heard from Solomons.—(See H.)

Lieutenant Langdon, who succeeded Morris, says that from May to July, 1857, he gave all the freight to Kennedy & Co., alleging also in justification the course pursued by and the conversation of Solomons, (which are no evidence.) The court cannot but note the conflict in this testimony. Why should Langdon go back to Solomons for justification in *refusing to give freight*, when his immediate predecessor, Morris, says that the plaintiff *had expressed his willingness to receive and actually did receive what was offered?*—(See H.)

Now, as to the offer, it was not all of the freight, but only a part; the witness says he was instructed to give half. It was not an offer of freight under the contract or at contract rates, but at such rates, he tells us, as happened to be ruling at that time. This was not even an offer of partial compliance, but an offer to do something else which the plaintiff might have accepted or refused without affecting any right. It was no more an offer of compliance with the contract than would have been an offer by defendants to give plaintiff freight from the Rio Grande to New Orleans.—(I and H.)

Plaintiff's rights, however, to recover for the whole amount of the contract from the moment of its infraction by the other party, is a plain principle of law.

But admitting any force in such an offer of partial compliance, it is but for one year out of two, and of but half the freight for that year. This is a virtual admission by the defendants of three-fourths of the plaintiff's claim.

Now, what would have been the profits of the plaintiff for the two years in which his contract was to operate, and what are his damages? They are not only the amount which he would have derived on the freight of the government, but the amount he would have made out of all the freight to be carried, public and private, in the two years. In his bid for public freight, the rates would have depended upon the value of private freight which would also be given to any line carrying public freight. This entered into the calculation, and was one of the motives inducing the plaintiff, and operating in favor of the defendants, and without it, without doubt, plaintiff nor any one else would have entered into the contract, and purchased the expensive machinery. This private freight went with the public. The case of

mail contractors on railroads and steamboats is of the same character. Without the private service the public would be impossible at other than tenfold increased rates.

1. It is in evidence that all or a large part of the freight carried by the rival line would have been given to plaintiff, had his contract with the government been carried out in good faith, and that this freight amounted to $300,000.—(See 15.)

2. It is also in evidence that the freight of the defendant, which was not given to the plaintiff, reached in the two years, $26,149.—(See 20.)

3. It is also in evidence that plaintiff's own loss by keeping up his boats to be ready at any moment to perform his stipulations with defendants, notwithstanding that he used them so as to diminish the liabilities of defendants, was $30,000, besides the wear and tear of the boats and interest on their value.—(15.)

4. It is finally in evidence that the whole freight could have been controlled by the plaintiff had the defendants's contract not been rescinded, and that plaintiff would in the two years have derived a clear profit of one hundred thousand dollars, and perhaps more.—(See the testimony of Conrad Bloom, a merchant on that frontier.) (20½.)

The facts and evidence of the case being presented, the principles of law which are applicable to them are too obvious to require an extended reference.

Sedgwick on Damages, page 58: Case of eviction of lessee, lessor may be bound to an amount even greater than the rent he would have received.

The Code Napoleon allows the loss sustained as well as the profits which also would have accrued.—(Lib. iii, title iii, section 1151.)

The Supreme Court of New York gave the plaintiff the whole loss which he incurred from not being able to carry on his business on account of defendant's act.—(Sedgwick, p. 72.)

See also, as to profits, 75 Sedgwick, and the decisions there cited; also page 86, and the case cited, where damages for an amount many times greater than the amount involved in the contract are allowed.

Tindal, C. J.: No wrongdoer can be allowed to aportion and qualify his own wrong; as a loss has actually happened whilst his wrongful act was in operation and force, and which is attributable to his wrongful act, he cannot set up an answer to the action, the bare possibility of a loss, if his wrongful act had not been done.—(6 Bing. Rep., 716; 19 Eng. Com. Law Rep., 212.)

The case of Shannon *vs.* Comstock, 21 Wend., 457, is conclusive upon the right of the plaintiff to recover the amount of his losses, whatever they were, where the defendant did not furnish the transportation agreed upon, but the question of profits was settled in that case by the plaintiff himself being in fault.

See also the case in 13 Howard, 344.

DEBOW, *for Plaintiff.*

ARMSTRONG *vs.* THE UNITED STATES.

Supplemental brief of plaintiff.

After hearing the views of the solicitor for the United States, the counsel for the plaintiff submits the following in addition to his printed brief:

1. That in no part of the evidence have defendants proved an offer even of partial compliance with the terms of their contract. They offered freight which was refused, it is true, but it was freight without reference to the contract and at current rates, which, under the influence of competition, might just at that time have been nothing at all, as is often the case on our northern boats. If the court will, however, read carefully the depositions of Solomons, Morris, and Landon, which is all the evidence defendants produce upon this point, they will find that *there is no proof that any freight was offered to plaintiff before October*, 1856, *or after December*, 1856, *though plaintiff in the last named month did receive freight* AND DID OFFER TO RECEIVE IT AFTER THAT TIME. Morris says distinctly that he offered none after December, 1856. Therefore defendants prove an offer of freight in but one month in the two years of this contract, and of but half the freight in that month.

2. Plaintiff amends his brief in regard to the matter of damages, having ascertained at the Third Auditor's Office that the amount of the freight of defendants, not given to him and to which he had a right, reached nearer $50,000 than $26,000. Plaintiff therefore asks that the court shall grant the full amount whatever it shall be ascertained to be, as the facts are only in the possession of the defendants.

3. Upon the question of damages and profits plaintiff cites other authorities: 1 Pothier, Ob., p. 90; Civil Code of Louisiana, § 1928; Cronan *vs.* Peters, 9 Louisiana Rep.; Rockwell *vs.* Allen, 7 Man., 254; Walker *vs.* Smith, 1 Wash., 152.

J. D. B. DEBOW,
Counsel for Claimant.

In regard to Major and Colonel Chapman, referred to in the plaintiffs brief, the counsel was in error in supposing them to be the same person, as he has subsequently learned.

IN THE COURT OF CLAIMS.—No. 965.

Trials 208.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

Solicitor's Brief.

This is a claim for damages for breach of a contract entered into by the quartermasters department and the petitioner, by which the latter agreed to transport freight for the government on the Rio Grande, Texas.

The contract appears to have been executed by proper authority, transmitted to the War Department, and passed to the Comptroller's office, as required in the case of valid and regular instruments by the 6th section of the act of July 16, 1798, (chap. 85, 1 Stat., 610,) whence the copy here in evidence comes. After the execution of the instrument, the quartermasters, acting under instructions from the commanding officer in Texas, (Chapman to Garesché, July 15, 1855,) directing them *to suspend operations under the contract* until further instructions, gave no freight to petitioner's boats. The further instructions were not given for nearly a year, (June 4, 1856,) during which the freight to which petitioner was entitled was given to another and rival line. After the receipt of the further instructions, which directed the quartermasters to divide the freight between the petitioner and the rival line, (Quartermaster General to Gill, June 4, 1856,) some freight was offered to the petitioner, but not expressed to be under the contract; but he refused to receive any unless he were allowed all.—(Lieutenant Solomon's deposition.) Afterwards he agreed to carry any freight that might be furnished, charging therefor current prices, and some little freight was given him at those prices.—(Lieut. Morris's deposition.)

The following points are made for the United States:

1. The United States did not covenant to give the petitioner any freight to carry; their covenant is to pay. It is a breach not to pay, on demand, for all freight which the petitioner was ready to carry, but it was no breach to send that freight by another line. The right of the United States to send freight by petitioner's boats was *jus pro se introductum*, which they could waive. Moreover, this contract was a separable contract—that is, it consisted of "many distinct contracts entered into at one time and expressed in the same instrument, but not thereby made one contract."—(Parsons on Contracts.)

2. Hence, the sending of some freight by other boats did not justify the petitioner in refusing to carry other freight when required by the quartermaster in 1856. The United States never repudiated the contract, and never declared they would send no freight by petitioner's line.

3. This refusal, and the subsequent receipt and transportation of government freight at current rates not under the contract, must be understood as a rescinding of the contract by mutual consent, or discharge of the first contract by the substitution of another and different contract.

4. The petitioner, therefore, can only recover for freight which he was ready to carry, up to the time of rescinding the contract.

5. This refusal was in Lieut. Solomon's time, who served from May 1 to November 17, 1856, and it was of course subsequent to the receipt by him of the quartermaster-general's letter of June 4, 1856. We can ascertain the time no nearer than that it was probably between June and November.

6. As the petitioner kept his boats running and ready to carry freight, and it appears that he could have carried all government freight in addition to what he did carry for others, there is some justice in his claim for dead freight, but the damages he claims are

merely speculative, and as for the losses of which he claims reimbursement, they are the expenses of carrying the freight which he demands in addition to the stipulated price of carrying it. The contract furnishes the measure of damages, and they cannot exceed dead freight.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

November 11, 1858.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The material facts which we find established in this case are as follows:

1. The contract on which the petitioner relies was duly made.

An advertisement for proposals was published in the newspapers of Brownsville and Galveston, Texas, and New Orleans, from the 19th of April till the 1st of June, A. D. 1855. The petitioner was the lowest responsible bidder, and the contract was awarded to him. After Garesché, the agent of the United States in the premises, had satisfied himself thoroughly as to the petitioner's ability to carry on the contract, and as to the extent of credit and capital which he could rely on to sustain him in his enterprise, the contract was executed by Garesché, the agent above named, on the part of the United States, and by the petitioner on his part.

Special notice was given to the petitioner that he must furnish a bond as security for the performance of his contract, if the quartermaster general should require it. The petitioner thereupon promised to furnish it, and named as his sureties Messrs. Grogan and San Roman. Grogan and San Roman were sufficient security.

The quartermaster general directed that the security should be required, but before his order for that purpose was executed, the contract with the petitioner was suspended by an order, dated July 15, A. D. 1855, from Major W. W. Chapman, issued by the authority and in the name of Brev. Maj. Gen. Persifer F. Smith, then commanding the department of Texas. No further demand for security was afterwards made of the petitioner. The suspension of the contract was never recalled.

2. The United States did not, at any time, offer the petitioner government stores of any description, or soldiers, or employés, or mules, to be transported by him under the contract, or in any way offer to perform the contract on their part.

3. Before the 1st day of August, A. D. 1855, the petitioner provided two steamboats, the "Swan" and "Guadalupe," for the purpose of enabling him to perform his part of the contract. The former, which was intended to be the sea boat, arrived in Brazos harbor on the 1st day of August, A. D. 1855, and the latter, which was in-

tended to be the river boat, arrived in Brazos harbor on or about the 15th day of August, A. D. 1855. These were, in the sense of the contract, good seaworthy steamboats, adequate to the transportation required by the contract. The petitioner continued in the possession of them from the 1st day of August, A. D. 1855, till after the 31st day of July, A. D. 1857, and employed them in running upon the routes mentioned in the contract continuously from the time they respectively arrived at Brazos harbor till after the 31st day of July, A. D. 1857.

3. The United States offered one-half of the government freight to the petitioner some time in the year 1856, to be transported by him, not under the contract, but at current rates. This offer was made after the 4th of June, A. D. 1856, under an order of the quartermaster general of that date, but at what particular time thereafter does not appear from the evidence. The offer was refused, and the reason assigned for the refusal was, that the contract for the transportation of government stores properly belonged to the petitioner's boats, and they could not take a part of it only: they would take no government freight, unless they could carry all. No freight, which was refused, was either before or afterwards offered by the United States to the petitioner for transportation. The petitioner afterwards, viz: on or about November 20, A. D. 1856, and again on or about December 10, A. D. 1856, accepted freight, which was offered to him by the United States for transportation. It was offered and accepted at the current rates, and not under the contract.

4. M. Kenedy & Co. received from the United States for freight on stores up and down the Rio Grande, between Brazos Santiago and Fort Brown and Ringgold barracks, from July 1, A. D. 1855, till June 30, A. D. 1857, the sum of $25,300 22, and for transportation of troops between the same points, during the same period, $4,258: and large sums were paid to K. King and others for similar services at the same time and places.

Our opinion is, that under the contract the petitioner was bound, upon the application of the quartermasters at Brazos Santiago and Fort Brown, to receive on board of good and seaworthy steamboats, and transport without delay, *all* government stores of every description, from and to the places therein mentioned, whenever required, from time to time during the existence of the contract, by those quartermasters or their agents; and that there was a corresponding obligation on the part of the United States to furnish *all* the government stores, which were to be transported during that period from and to those places, to the petitioner to be transported by him according to his undertaking. In withholding those stores from the petitioner, and causing them to be transported by others, the United States failed to perform their part of the contract.

The petitioner was, at all times during the continuance of the contract, *ready and willing* to perform his part thereof. He could in fact be in no default until application was made to him, by a quartermaster or his agent, to transport stores under the contract. The first act was to be done by the United States. If such application had been made to the petitioner, and he had then failed to make the transpor-

tations required, without delay, he would have been in default, and liable for a breach of the contract. But no such application was ever made. On the contrary, the contract was suspended by the United States before it went into operation, and the suspension continued till after the expiration of the period during which the contract was, by its terms, to operate. That suspension was a continuous breach of the contract from the 1st day of August, A. D. 1855, till the 31st day of July, A. D. 1857, and the petitioner is justly entitled to damages therefor.

As to any loss which the petitioner may have sustained by his failure to obtain freight from individuals in consequence of the suspension of the contract between him and the United States, it is too remote to impose any liability on the United States.

We are of the opinion that the petitioner is entitled to relief, but the evidence on file is insufficient to enable us to determine the damages which he has sustained.

IN THE COURT OF CLAIMS.

November 22, 1860.

JAMES B. ARMSTRONG *vs.* THE UNITED STATES

SCARBURGH, J., delivered the opinion of the court.

In the opinion heretofore delivered in this case, the material facts, which this court found established by the evidence, were stated; and we held that the petitioner is entitled to relief, but that the evidence then before us was insufficient to enable us to determine the damages which he has sustained. An order was then made, on the motion of the petitioner, authorizing the taking of further testimony. Since that time further evidence has been filed, and this case has been again heard.

It is plain, from the circumstances of this case, that when public notice was given for proposals to be made for transportation, by water, of army stores and supplies between the points embraced by the contract between the petitioner's intestate and the United States, and for the period therein mentioned, it was a matter which entered into the contemplation of the United States, that the competitors for the contract must necessarily be those who either were already engaged in the carrying trade on the Brazos river, or who designed to engage in that business. It was not expected by the United States that any person would make a proposal who would not connect his duties under the contract with the general carrying business. It was well understood, too, that this circumstance would give the United States the advantage of greatly reduced rates, whilst the contractor would find his advantage in securing an important addition to his business. We cannot close our eyes to this consideration. It is, it seems to us, essential to the proper administration of justice between the parties.

The contract with the petitioner's intestate was to have gone into operation on the 1st day of August, A. D. 1855. On the 24th day of July, A. D. 1855, Lieut. Garesché received orders to suspend it; but he had already received notice from the petitioner's intestate that he had provided two suitable boats, the *Swan* and the *Guadalupe*, and should leave Galveston with them at night on the 27th of that month. And Lieut. Garesché, at some time—when does not distinctly appear—between the 24th day of July and the 1st day of August, A. D. 1855, gave the petitioner's intestate notice of the suspension of the contract. But he had then made every necessary preparation to enable him to enter upon the performance of the contract, and to engage in the general carrying business, with which he expected to connect his duties under the contract. Whether the suspension was a breach of the contract, and if the petitioner's intestate had so elected, he might immediately thereupon have rightfully demanded damages therefor, or whether it was necessary for him to hold himself at all times ready to perform the contract on his part until its expiration, it is not material now to determine. We do not doubt that the petitioner was at liberty to go on with the business in which he was engaged; and as he did so, and continued to prosecute it until after the expiration of the two years during which the contract was to continue, the measure of damages must be the same, whether the law be as implied in either the one or the other of the questions just noticed. If a similar contract where made with a railroad company, it would be just as reasonable, upon such a breach of it, to require them to stop the running of their cars, as on the breach of this contract to require the petitioner's intestate to abandon his business as a carrier.

Whether it was or was not necessary, in order to entitle the petitioner's intestate to recover damages for a breach of the contract, that he should have been ready and willing on the 1st day of August, A. D. 1855, to perform the contract on his part, the *fact* is that he was so ready and willing. The *Swan* arrived in Brazos harbor on that day, and the *Guadalupe* on or about the 15th of that month. In the strictest sense, it could not be true that he was not ready and willing on the 1st day of August, A. D. 1855, unless it were shown that there was work under the contract for more than one boat before the *Guadalupe* arrived. But the first step was to be taken by the United States. According to the express terms of the contract, application was to be made to the petitioner's intestate by the quartermasters or their agents, and consequently there could be no necessity for any action on his part until such application was made. It was enough for him to be ready and willing, *upon* such application. Moreover, if, on the arrival of the *Swan*, stores had been duly shipped on board of her under the contract, and there had been no occasion for making further application to the petitioner's intestate till after the arrival of the *Guadalupe*, it is plain that he would have fully met all the requirements of the contract. Hence, in legal intendment as well as in fact, the petitioner was, on the 1st day of August, A. D. 1855, ready and willing to perform the contract on his part.

The contract, then, having been broken by the United States, the

petitioner's intestate became entitled to such damages as would justly compensate him for the injury which he thereby sustained.

In the case of Clark *vs.* Marsiglia, (1 Denio R., 317,) a party, who was employed to do certain mechanical work at a price agreed upon, and had commenced it, was afterwards forbidden to proceed with its execution; and it was held, that the measure of damages was full compensation for his part performance and indemnity for his loss in respect to the part left unfinished. And the court declared, that to persist in accumulating a large demand, by going on with the work after he had been forbidden to proceed with its execution, was not consistent with good faith towards his employer. Whilst that case rests upon a principle which runs through most if not all of the cases relating to the measure of damages for breaches of contract, still it must be conceded that it is not strictly analogous in its circumstances to this case. Here the petitioner's intestate was never forbidden to proceed with the execution of the contract, but the contract was merely suspended. As the suspension might at any moment have been removed, he might very properly have continued to hold himself ready to enter upon the performance of the contract, whenever such removal should take place. Still he was not at liberty, any more than the contractor in the case of Clarke *vs.* Marsiglia, unnecessarily to enhance the damages to be paid by the United States. As we have already intimated, we do not deem it necessary to inquire whether the petitioner's intestate was at liberty to incur any further expense than he had already incurred when the contract was suspended, in going on with the contract on his part. It nowhere appears from the evidence in this case, that, to effect the transportation required by the contract during the two years for which it was to continue, it would have been necessary that the petitioner should have added a farthing to the expenses of the business in which he was engaged. The burden of proof as to this point is on the United States.—(Costigan *vs.* Mohawk and H. R. R., 2 Denis R., 610.) The case of Clarke *vs.* Marsiglia is certainly not an authority to show that it was his duty to have abandoned that business, and it is believed that no such authority can anywhere be found. It may be observed, however, that the case of Clarke *vs.* Marsiglia is but an illustration of the principle that a party injured by the breach of a contract is entitled only to just compensation for the injury which he, in fact, sustains by reason of such breach.

The cases of the Philadelphia, Baltimore, and Wilmington R. R. Co. *vs.* Howard, (13 How. R., 307,) Myers *vs.* The N. Y. and Cumberland R. R. Co., (2 Curtis C. C. R., 28,) and Durkee *vs.* Mott, (8 Barbour R., N. Y., 423,) are illustrations of the same principle. Still, it is true that they differ in their circumstances as essentially from this case as does the case of Clarke *vs.* Marsiglia. The most that can be deduced from these cases in favor of the United States is, that whatever sum of money was expended by the petitioner's intestate in the further execution of the contract after its suspension, cannot be estimated as a part of the damages which he has sustained. For reasons already stated, it is not deemed necessary to investigate this point. It does not appear that any money must necessarily have

been so expended, even if the contract had been fully performed on both sides.

The cases relating to damages for breaches of contracts to furnish freight are more analogous to this case. In such cases the principle seems to be well settled, that where a merchant has contracted to furnish a general ship with a complete lading, or a specified number of casks or bales, or certain enumerated articles, and failed to do so, he must make good the loss which the owner has sustained by his failure. In estimating their loss, all the circumstances attending the transaction must be taken into consideration. The ship-owner is bound to take reasonable measures to reduce the amount of injury consequent on the merchant's default. If he actually received money for substituted freight, or might have done so by availing himself of all proper opportunities to substitute other freight, the money so received, or which might have been so received but for the negligence or refusal of the owners, will be allowed in mitigation or reduction of the entire sum stipulated to be paid for the freight of the articles which were not furnished. Nor in such a case is the ship-owner at liberty to pursue the voyage for the *mere purpose* of charging the defaulting merchant with the gross sum stipulated to be paid by him.—(Puller *vs.* Staniforth, 11 East. R., 232; Heckscher *vs.* McCrea, 20 Wend., 304; Bailey *vs.* Damon, 3 Gray R., (Mass.) 92.)

In the case of a breach of a general covenant to load a ship, Lord Tenterden lays down the principle to be, that the jury, in estimating the damages, will make a deduction for such benefit, if any, as the master might derive from bringing the goods of other persons; but if he should be obliged to return empty, they will award damages equivalent to the sum that would have been payable by the merchant for a full cargo, taking care, on the one hand, that the master shall lose nothing, and, on the other hand, that he shall gain nothing by the breach of the merchant's contract —(Abbott on Shipping, (7th Am. ed.) 637.)

According to these principles, the petitioner's intestate was entitled to the full price stipulated in the contract for all the government stores transported between the points embraced by the contract from the 1st day of August, A. D. 1855, till the 31st day of July, A. D. 1857, after deducting therefrom such sums of money as he actually received for freight on government stores actually carried by him.

The quartermaster general, in a letter to Lieutenant Gill, dated June 4, A. D. 1856, directed him to forward the government stores by either the line belonging to M. Kennedy & Co., or that belonging to the petitioner, whichever "has a boat ready at the time, without waiting for or showing favor to one or the other of the owners." When this letter was received does not appear from the evidence. Lieutenant Gill was not at that time the acting assistant quartermaster at Fort Brown.—(See his deposition.) Lieutenant Solomon was the assistant quartermaster there in October, A. D. 1855, and in May, June, July, August, September, October, and a portion of November, A. D. 1856. He states that during that period he offered freight to be transported by the petitioner's boats, but it was declined; and the ground stated for declining it was, that the contract

for the transportation of government stores properly belonged to that line, and it would not take a portion thereof only. This must have occurred between the 4th of June, A. D. 1856, the date of the quartermaster general's letter to Lieutenant Gill, and the latter part of October, or the early part of November, in that year, when complaint was made that the petitioner's line was not allowed freight.—(See Mr. Solomon's deposition.) All the freight which was subsequently offered to the petitioner's line was received and carried, so that freight which was declined was offered on but a single occasion, and it nowhere appears how much was then offered. The burden of proof as to this point, if it could be made available to the United States, is on them. We are, therefore, relieved from the consideration of the question, whether, if a party, who is bound by contract to furnish goods to a ship-owner for transportation, refuses to perform his contract, but offers a portion only of the same goods to be carried to the same place upon terms more or less disadvantageous to the ship-owners than those stipulated in the contract, such party can justly claim a reduction *pro tanto* of the damages to which he is subject for the breach of his contract. We are not to be understood as holding the affirmative of that question; but we do not now consider it, because it does not seem to us to be involved in this case.

It is no answer, in our judgment, to these views that the main business, in which the petitioner's intestate was engaged when the contract was suspended, has proved to be unprofitable, or that, even with the addition of the freights to which he was entitled under the contract, he would still have been a loser. The failure of the United States to perform their contract with him did not make it his duty to abandon the business of a carrier, in which he had engaged. He may not have been at liberty to pursue it merely to charge the United States; nor does it appear from the evidence that he did so. And it seems to us to be clear that he was not bound to abandon a pursuit, which he may have deemed conducive to his own interests, merely to save the United States from the consequences of a wilful breach of their own solemn contract.

We hereto append a statement, marked "X," made up from the evidence in this case, showing the amount due the petitioner according to the foregoing principles.

Our opinion is, that the petitioner is entitled to relief. We shall report to Congress a bill in his favor for the sum of seventeen thousand eight hundred and forty-six dollars and seventy-eight cents, ($17,846 78,) the amount stated in the statement just referred to.

Hughes, J., did not sit in this case.

X.

It appears from the report of the Third Auditor that there were transported between Brazos Santiago and Fort Brown, during the two years commencing August, 1855, and terminating July 31, 1857, the fol-

lowing property and persons, and at the rates agreed to be paid J. B. Armstrong, the amounts would have been as appended:

7,682½	cubic feet measurement goods, at 8 cents - -	$614 56
5,495	pounds, at 25 cents per 100 - - -	13 73
26,086	bushels grain, at $1 27½ per bushel - -	3,260 75
228	persons, at $2 50 - - - - -	570 00
1,378	barrels flour, at 40 cents - - - -	551 20
275	barrels pork, at 90 cents - - - -	247 50
5,153	feet lumber, at $10 per 1,000 - - -	51 53
35	bales hay, at $1 50 - - - -	52 50
2,000	shingles, at $1 10 per 1,000 - - -	2 20
1	horse - - - - - -	4 00
		5,367 97

The auditor also reports that certain companies of soldiers were transported between the above named posts during the same period, but does not give the number of persons. The adjutant general, in report dated July 8, 1859, supplies the omission, and it appears the number so transported was:

232 persons, which, at $2 50, would amount to - -	$580 00
	*1,097 50

The Auditor also reports a quantity of freight transported in hogsheads, casks, barrels, &c., but does not give either the measurement or weight. It appears, however, from the report of J. L. Coburn, late captain in the army, that many of these packages are of known and uniform weight or dimensions; and by his statement of the weight and dimensions of such packages, it is shown that the measurement not stated by the Auditor, was:

737 6/12 cubic feet, which, at 8 cents, amounts to - -	$59 00
And 137,895 pounds, which, at 25 cents per 100, amounts to - - - - - - - -	344 73
	493 73

Between Ringgold Barracks and Fort Brown the freight reported by the Auditor, and of which the quantity is stated by him is as follows,

* The quartermaster general, in reply to an inquiry from the solicitor's office, says the 5th regiment of infantry was transported by water down the river to Brazos, on the occasion referred to in the adjutant general's letter of July 8, 1859. This transportation is not given by the Auditor. The force was, as stated by the adjutant general, 428 officers and men. The quartermaster general also states that companies B, K and M, 4th artillery, were transported by water from Fort Brown to Brazos. The strength given by the adjutant general was 133. The Auditor gives the transportation of 122 men. The number to be added is 11, viz: On the report of the adjutant general and quartermaster general, 428 and 11 men—439, at $2 50, $1,097 50.

the contract prices being now given, from the agreement with Armstrong:

$3,509\frac{9}{12}$	cubic feet, at 20 cents - - - -	$701 95
11,368	pounds, at 60 cents per 100 - - -	68 20
23,564	bushels grain, at 22 cents - - -	5,184 08
62	persons, at $4 - - - - -	248 00
1,102	barrels flour, at $1 - - - -	1,102 00
194	barrels pork, at $1 20 - - - -	232 80
3,669	feet lumber, at $18 per 1,000 - - -	66 04
		7,603 07

The companies reported by the Auditor and for which the numbers are given by the adjutant general, consisted of:

536 persons, amounting, at $4, to - - - - $2,144 00

The property transported, as reported by the Auditor, without giving weight or dimensions, and of which the weight or dimensions have been ascertained from the statement of Captain Coburn, above referred to, is:

$530\frac{6}{22}$	cubic feet, amounting, at 20 cents, to - -	$106 10
163,402	pounds, amounting, at 60 cents per 100, to -	980 41
		1,086 51

Recapitulation.

Between Brazos San Diego and Fort Brown:		
Ascertained	by Auditor's report alone - - -	$5,367 97
Do.	by Auditor and adjutant general - -	580 00
Do.	by quartermaster general and adjutant general	1,097 50
Do.	by Auditor and Captain Coburn - -	403 73
Between Fort Brown and Ringgold barracks:		
Ascertained	by Auditor alone - - - -	7,603 07
Do.	by Auditor and adjutant general - -	2,144 00
Do.	by Auditor and Captain Coburn - -	1,086 51
	Total claim - - - - -	18,282 78

But the solicitor for the United States claims that a portion of the above freight was transported by J. B. Armstrong's boats, and that for such transportation he was paid three several sums of $17, $89 and $330, as per Auditor's letters of November 4, and December 7, 1859, in all - - - - - - - - 436 00

Thus reducing the claim to - - - 17,846 78